

# ATTACHMENT A TO STAFF REPORT

## **Public Comment Letters Received (as of 29 September 2006) on the Draft Cease and Desist Order and Connection Ban for Napa Berryessa Resort Improvement District Wastewater Treatment System, Napa County**

### Contains:

15 September 2006 Letter from Darly & Kathy Nix (4 pages)  
18 September 2006 Letter from Russel & Monica Lee (2 pages)  
19 September 2006 Letter from Brian Johnpeer (1 page)  
19 September 2006 Letter from Nathan Penley & Family (4 pages)  
26 September 2006 Letter from Daryl & Kathy Nix (4 pages)  
28 September 2006 Letter from Nathan Penley & Family (8 pages)  
28 September 2006 Letter from Mike Raymond (2 pages)  
28 September 2006 County of Napa Re: B06-01305 (1 page)  
28 September 2006 County of Napa Re: B06-01258 (1 page)  
28 September 2006 County of Napa Re: B06-01142(1 page)  
28 September 2006 County of Napa Re: B06-01338 & B06-01374(1 page)  
29 September 2006 Letter from Daryl & Kathy Nix (8 pages)  
29 September 2006 Letter from Brian D. Johnpeer (9 pages)  
29 September 2006 Letter from David D. Horobin Re: Russel Lee Property (3 pages)  
29 September 2006 Letter from California Sprotfishing Protection Alliance (7 pages)  
29 September 2006 Letter from NBRID (10 pages)

***DARYL & KATHY NIX  
4645 Monticello Road  
Napa, CA 94558  
707-252-9564  
707-252-6814 Fax***

***TO: Mark List***

***FROM: Daryl & Kathy***

***DATE: 9-15-06***

***RE: CEASE & DESIST ORDER for Napa  
Berryessa Improvement District***

***Please exclude the first letter and add this letter as I did not  
include our address and phone numbers on the first.***

***Thanks so much for any help you can give us!***

September 15, 2006

TO: CENTRAL VALLEY REGIONAL WATER CONTROL  
ATTN: MARK LIST, Supervisor

FROM: DARYL & KATHY NIX  
4645 Monticello Road, Napa CA 94558  
PHONE: 707-252-9564  
FAX: 707-252-6814

RE: CEASE & DESIST ORDER for Napa Berryessa Resort Improvement District  
Wastewater Treatment System

TO WHOM IT MAY CONCERN:

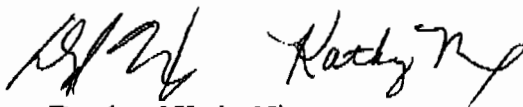
We just became aware of the above order issued September 13, 2006. We are owners of a lot located in the Berryessa Highlands on Bahia Vista. We are a small family developer in this area, myself, my husband and my son. We have been developing homes one at a time for the past 3 years. We are able to sustain our family on the income we have received out of these homes.

We started our permit for development on our Bahia Vista lot on July 26, 2006, Application #B06-01258. We are ready to start the project September 18, 2006. Everything is finished with the permit process and we are ready to pull the final permit now. I went to pay for the Water/ Sewer fees today at Napa County Public Works and they informed us of the CEASE AND DESIST ORDER they had just received and that they could not let us proceed.

This "will" financially ruin us if we are not able to proceed with this project. We have a loan for this project and the lot purchase already in process of \$250,000. I am a Manufactured Home Dealer with the State of California, Dept. of Housing and Community Development and I have ordered a home that has already been built and is ready to transport now to the site. I will not be able to pay for the home if we are not able to proceed for the draw in this loan to pay for the home. Not only will we be financially ruined, but I stand a chance on losing my license as well as my contract with the wholesaler, Karsten Homes in Sacramento.

Since this is a family business, not only will this financially devastate our livelihood, but my son and his home as well. We are praying that this can be resolved quickly and that we will be able to move forward as planned to curtail any damage.

Very Sincerely,



Daryl and Kathy Nix

September 15, 2006

TO: CENTRAL VALLEY REGIONAL WATER CONTROL  
ATTN: MARK LIST, Supervisor

FROM: DARYL & KATHY NIX  
4645 Monticello Road, Napa CA 94558  
PHONE: 707-252-9564  
FAX: 707-252-6814

RECEIVED  
SACRAMENTO  
CVRWOCB  
06 SEP 18 PM 3:18

RE: CEASE & DESIST ORDER for Napa Berryessa Resort Improvement District  
Wastewater Treatment System

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Very Sincerely.



Daryl and Kathy Nix



Transport Information  
Contact: Susan Holloman  
(916) 363 - 2681, ext. 51  
(916) 363 - 2769 (fax)

RETAILER

Liberty Homes

FAX #

707-252-6814

TRANSPORTER

FAX #

RUN #

578

SERIAL #

32892

CUSTOMER/STOCK

Bahia Vista #98

	A	B	C
HEIGHT	<u>15'10"</u>	<u>15'10 1/2"</u>	<u>          </u>
LENGTH	<u>52'</u>	<u>52'</u>	<u>          </u>
WIDTH	<u>11'10"</u>	<u>11'10"</u>	<u>          </u>
EAVES	<u>16"</u>	<u>16"</u>	<u>          </u>

WEIGHT CERTIFICATE

YES

NO

☒

SPECIAL NOTES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Magnate Fund #2 LLC

1355 Willow Way, Suite #244  
Concord, CA 94520  
Phone (925) 676-7038 Fax (925) 676-1142

Loan # 0

## EXHIBIT "A" - CONSTRUCTION DISBURSEMENT SCHEDULE

MAXIMUM DISBURSEMENT: 5 DRAWS, 10 CHECKS, 10 PAYEES

ADDITIONAL DRAWS = \$150.00 ADDITIONAL CHECKS = \$75.00

**INITIAL** \$117,061.00

Est. Disbursement Date 4/18/2006

Check Payable to:	Land Payoff	\$ 100,000.00
Check Payable to:	Estimated Title Fees	\$ 1,500.00
Check Payable to:	Deposit to mobile home escrow	\$ 24,105.00
Check Payable to:	Building permits/school fees <del>FEES</del>	\$ 15,500.00
Check Payable to:	Daryl Nix (soils report, foundation plans, lot prep)	\$ 6,880.00

**DRAW #2** \$19,500.00

Est. Disbursement Date

Check Payable to:	Daryl Nix (foundation) <i>Nix Construction</i>	\$ 19,500.00
Check Payable to:	Note: copy of building permit required for this draw	\$ -
Check Payable to:	0	\$ -

**DRAW #3** \$15,074.00

Est. Disbursement Date

Check Payable to:	Ernie's Mobile Transport (transportation)	\$ 2,400.00
Check Payable to:	Quality Communities (set house)	\$ 10,974.00
Check Payable to:	S&S Rewall-sheetrock \$1,000/Gary Eisenhower-carpet \$700	\$ 1,700.00

**DRAW #4** \$72,315.00

Est. Disbursement Date

### Balance Due on Home

Check Payable to:	Dealership and/or Flooring Company	\$ 72,315.00
Check Payable to:		\$ -

**DRAW #5** \$7,150.00

Est. Disbursement Date

Check Payable to:	Daryl Nix (deck, utilities)	\$ 7,000.00
Check Payable to:	Note: inspection to verify house set on foundation required	\$ 150.00
Check Payable to:	for this draw	\$ -

Interest Reserve	\$ 5,000.00
Construction Reserve	\$ -
Lenders Fees	\$ 13,900.00
Loan Amount	\$ 250,000.00
Estimated Cash to Close	\$ 30,924.00

I/We the undersigned have reviewed the disbursement schedule and estimated funding dates and give Magnate Fund #2 LLC our authorization to fund accordingly. I/We give Magnate Fund #2 LLC authorization to use our reserve (if available) to pay for additional costs or overruns to complete project. If no reserve exists I/We understand that Magnate Fund #2 LLC will not be able to pay the contractor in full and I/We will have to make arrangements to satisfy the contractor accordingly. In the event that actual construction cost is less, I/We authorize Magnate Fund #2 LLC to credit our reserve account. If draw request exceeds the disbursement amount, the draw will not be made and no further draws will be made until resolved.

In addition, I/We acknowledge that Magnate Fund #2 LLC will debit our reserve, on the first of every month, the interest accrued on our construction balance. In the event the reserve is diminished to an amount insufficient to pay the interest accrued, I/We promptly pay Magnate Fund #2 LLC the interest due to prevent default on the promissory note.

**RECEIPT**

**NAPA COUNTY**  
**1195 THIRD STREET**  
**SUITE 210**  
**Napa, CA 94559**

**Application:** B06-01258

**Application Type:** Building / Mobile Home / MFG Home Permanent Foundation / New

**Address:** CA

**Owner Name:** Kathy and Daryl Nix

**Owner Address:** 4645 Monticello Rd, Napa, CA 94558

**Receipt No.:** 58398

<b>Payment Method</b>	<b>Ref Number</b>	<b>Amount Paid</b>	<b>Payment Date</b>	<b>Cashier ID</b>	<b>Comments</b>
Check	6514	\$187.00	07/26/2006 01:17:22 PM	CBEYE	

**Owner Info.:** Kathy and Daryl Nix  
4645 Monticello Rd  
Napa, CA 94558

**Work Description:** MH on permanent foundation w/ garage

T8108-D  
Version 4.0



**TO: Mark List, CALIFORNIA CENTRAL VALLEY REGIONAL  
WATER QUALITY CONTROL BOARD 916-464-4780**

**RE: CEASE AND DESIST ORDER for NAPA BERRYESSA RESORT  
IMPROVEMENT DISTRICT WASTEWATER TREATMENT  
SYSTEM NAPA COUNTY**

**From: Russel and Monica Lee**

**Fax: 707-569-1430**

**Contact: Phone 707-888-8791**

**Email: [russlee@pacbell.net](mailto:russlee@pacbell.net)**

**Address:**

**5758 Fairway Knoll Ct**

**Santa Rosa, CA 95403**

**Subject: Extreme Hardship!P**



Russel J. Lee & Monica Valentine Lee  
5758 Fairway Knoll Ct  
Santa Rosa, CA 95403  
September 18, 2006

Mark List, CALIFORNIA CENTRAL VALLEY REGIONAL WATER QUALITY  
CONTROL BOARD  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670

Dear Mark List, CALIFORNIA CENTRAL VALLEY REGIONAL WATER QUALITY  
CONTROL BOARD,

Sir, thank you for spending time with me today and supplying me with the information regarding the Napa Berryessa Resort Improvement District Cease and Desist (C&D) Order. I found your web site most helpful. As you suggested I am writing this letter to you describing my situation.

On 7/13/06 we purchased a building lot at 191 Woodhaven Ct. for \$127,500.00. Our goal was to build our new home on this lot, and live happily ever after together in a beautiful area.

So far we have spent, about \$150,000.00 out of our pocket on prep work and plans for our new home. On 9/18/06 we closed escrow on our \$525,000.00 construction loan. With this C&D order in effect, not only will we be out of pocket these funds, but this will render to value of our lot to 0 for the term of the C&D. We have worked and saved for this and now our lives are on hold. This is causing us extreme financial and personal hardship. This could very well cause us to file bankruptcy and lose everything we have worked so hard for all our lives.

Had we had any notice regarding the C&D order we could have made other plans. This lack of notice may well ruin us.

We are asking you to grant us an acceptance to the C&D order.

Respectfully,



Russel J. Lee

September 19, 2006

TO: CENTRAL VALLEY REGIONAL WATER CONTROL  
ATTN: MARK LIST

FROM: Brian Johnpeer

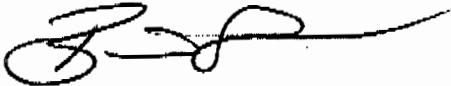
REGARDING: PERMIT # B06-01305  
1122 RIMROCK  
NAPA CA 94558

Dear Sir / Ma'am,

It has recently come to my attention that there is a cease and desist order for the Napa Berryessa resort improvement district wastewater treatment system. I have a large loan out on a project in the Berryessa Highlands which I must complete. I have already filed for permits and have one other party involved as an individual investor on the Rimrock project. Not being able to complete this project would be detrimental to not only my own financial well being, but my reputation as a developer, (which in turn will loose the faith and loyalty of the few investors of who I work with).

I am asking that you allow my project to continue as planned, so I do not face financial ruin. Time is of the essence since my loan matures in a matter of months, and a swift response is much appreciated. You can reach me at (916) 826-2920, or by E-mail at [bjmrfixit@frontiernet.net](mailto:bjmrfixit@frontiernet.net)

Thank You

A handwritten signature in black ink, appearing to read 'Brian Johnpeer', with a long horizontal flourish extending to the right.

Brian Johnpeer

ATTN: MARK LIST

TO WHOM IT MAY CONCERN:

My NAME IS NATHAN PENLEY. I OWN LOT 32 NEPTUNE CT. A.P.N. # 019-421-007. AS OF 9/12/06 MY LOT & FUTURE FAMILY HOME SITS WITH 37 PIERS HOLES 20' DEEP & CAGES IN THEM EMPTY. I WAS TO POOR CONCRETE ON 9/14/06. THE SAME DAY I WENT TO PAY FOR PERMITS. I HAVE \$50,000.00 OF MY WIFE & MY MONEY/LIFE SAVINGS INVESTED IN THE LAND, PLUS 60,000.00 OF MY LENDERS MONEY. I ALSO HAVE A 430,000.00 CONSTRUCTION TO MORTGAGE LOAN WITH 100,000.00 ALREADY SPENT. ON 9/12/06 I WAS CONTACTED BY THE NAPA COUNTY BUILDING DEPT. I WAS INFORMED THAT MY PLANS WERE APPROVED, WET STAMPED WITH MY BUILDING PERMIT ISSUED. ALL I WAS TO DO, IS COME IN AND PAY MY FEES. I WAS UNABLE TO LEAVE MY JOB THAT DAY 9/12/06. I MADE ARRANGEMENTS TO GET THE MONEY RELEASED BY THE BANK & LEAVE WORK TO PAY ON 9/14/06. I WENT TO THE COUNTY OFFICE AND EVEN THOUGH I WAS APPROVED AND ISSUED A PERMIT, THEY WERE UNABLE TO HAND IT TO ME DUE TO THE CEASE AND DESIST ORDER. MY FAMILY'S LIVELY HOOD DEPENDS ON THIS PERMIT AND THE PROJECT GOING FORWARD. IF IT DOES NOT, WE STAND TO LOSE EVERYTHING WE HAVE WORKED SO HARD FOR, I.E. OUR MONEY AND DREAM HOMES.

WE HAVE 20,000<sup>00</sup> IN ENGINEERING,  
ARCHITECTURE AND SOILS ENGINEERING  
INVESTED. WE UNDERSTAND WHY YOU ARE  
DOING WHAT YOU ARE, AND AGREE THAT THE  
ISSUE NEEDS TO BE ADDRESSED PROMPTLY.  
WE FEEL AS THOUGH WE HAVE MET YOUR  
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BUILDING PERMITS. DUE TO WORK AND  
CIRCUMSTANCES OUT OF OUR CONTROL, I  
COULD NOT PAY MY DUES UNTIL 9/14/06. IF  
I HAD RECEIVED SOME SORT OF NOTICE STATING  
THAT ON 9/13/06 THERE WOULD BE A CESS  
AND DESIST ORDER, I WOULD HAVE FOUND A  
WAY TO PAY ON 9/12/06. BUT I HAD NO  
PRIOR KNOWLEDGE OF THIS ACTION. MY  
CONSTRUCTION LENDER IS VERY UPSET, THE  
ONLY REASON THEY RELEASED THE MONEY IS  
DUE TO THE COUNTY CLEARING PLANS AND  
ISSUING PERMITS FOR CONSTRUCTION. NOW I  
FEAR THE ACTION THE LENDER WILL TAKE  
AGAINST MY FAMILY. SHOULD YOU NEED ANY  
PROOF OR BANK DOCUMENTS, I HAVE ALL OF  
THEM TO SHOW THE FIGURES STATED IN THIS  
LETTER. MY LENDER ALSO REQUEST YOUR  
INFORMATION. I HOPE YOU UNDERSTAND THE  
SEVERE DAMAGE AND HARDSHIP THIS WILL  
CAUSE TO MY FAMILY.

AS OF NOW WE HAVE TO PAY ON A  
CONSTRUCTION/MORTGAGE LOAN AT 4000<sup>00</sup>  
A MONTH, FOR A HOME WE ARE AT THE  
LAST SECONDS BEING TOLD WE CAN'T BUILD.  
WITH YOUR UNDERSTANDING OF THE  
SITUATION AND TIME LINES/DATES IF HAVE BEEN  
A VICTIM OF, I HOPE THAT YOU WILL GRANT  
US OUR PERMITS TO BUILD, SINCE WE HAD  
NO PRIOR KNOWLEDGE OF THE CEASE AND  
DISIST, AND WERE CLEARED FOR PERMITS  
ON THE 12 DAY OF SEPTEMBER 2006.

Sincerely \$ AT YOUR MERCY

NATHAN Penley  
\$  
FAMILY

ATTN: MARK LIST

NATHAN PENLEY  
1669 THORNWOOD DR.  
CONCORD CA, 94521  
(707) 322-4750  
(925) 687-1260

***DARYL & KATHY NIX  
4645 Monticello Road  
Napa, CA 94558  
707-252-9564  
707-252-6814 Fax***

***TO: Mark List – State of California Central  
Valley Regional Water Control***

***FROM: Daryl & Kathy***

***DATE: 9-26-06***

***RE: CEASE & DESIST ORDER for Napa  
Berryessa Improvement District***

*Please find the attached letter sent to Napa County Supervisor,  
Diane Dillion.*

*We are in desperately needing relief... as we have no income  
unless we can proceed with a permit.*

September 26, 2006

TO: DIANE DILLION, Napa County Supervisor

FROM: DARYL & KATHY NIX  
4645 Monticello Road  
Napa, CA 94558  
PHONE: 707-252-9564  
FAX: 707-252-6814

RE: CEASE & DESIST ORDER for Napa Berryessa Resort Improvement District  
Wastewater Treatment System

Dear Diane,

I am following up after speaking with you today and regarding the letter we faxed you on September 21, 2006 and again today. We desperately need a response from you, our Representative in the Lake Berryessa area, along with the Napa County Board of Supervisors to receive some immediate help and relief in the in the matter of the Cease and Desist Order for the Napa Berryessa Resort Improvement District Wastewater Treatment System.

The first introduction we would like to make is that we are Pastors of the Community Church of Lake Berryessa in your District. We have been pastors there in this small church for the past 7 years and have had to work regularly to support our family and the Church. We have worked diligently to make the Lake Berryessa community come together and create an atmosphere that will produce growth in the community spirit. We have worked in the Church and community to bring the Napa Valley Food Bank to the area as well. We also have a weekly food distribution solely produced by the Church. Our personal work in business and the financial support that brings in tithes to the Church have kept the doors open.

We are a small family developer and we were about to pull our permits for Application #B06-01258 dated July 26, 2006 with the Napa County Planning and Building Dept. for proceeding with our next project on lot# 98 Bahia Vista in the Berryessa Highlands when this Cease and Desist Order came without any prior notice. We had "every requirement of the Napa County Planning and Building Dept." in and completed to pull our permit to start the project. We just needed to pay fees and start. We have a loan for \$250,000 for the lot and construction. We have no way to pay for this loan or to refinance it, in other words we have no options to pay for this short term construction loan at present if we are not allow a permit to start. We are one of three that we know of that are caught in this tragic event. We feel this these are isolated cases and should be handled differently to give relief to individuals left with no options but financial ruin.

As I had mentioned to you, I am also a Manufactured Home Dealer with the State of California, Dept. of Housing and Community Development. I ordered and paid \$21,000

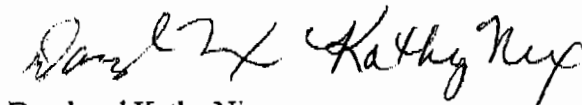


for a home for this project out of a draw from the construction loan. The house is built and now ready to be moved from the factory. I still owe \$53,000 right now that I cannot pay because I am not able to proceed with the draws on this construction loan for this project. Today Karsten Homes in Sacramento is meeting to make a decision on whether they are going to take back the home and cancel my retail dealer status with them if I cannot proceed and pay for the home immediately. This has also been a primary source of income to us and will devastate our financial status.

The pressure of this incredible stress has left us not knowing exactly where to go for help. We are at a place where we cannot pay our bills, as we had built in income in our project draws for both my husband and my son. At this point we suddenly have no income.

We are praying that your meeting tomorrow with the State of California and Napa County Public Works will be fruitful in giving us some immediate relief and allow us to proceed.

Very Sincerely,



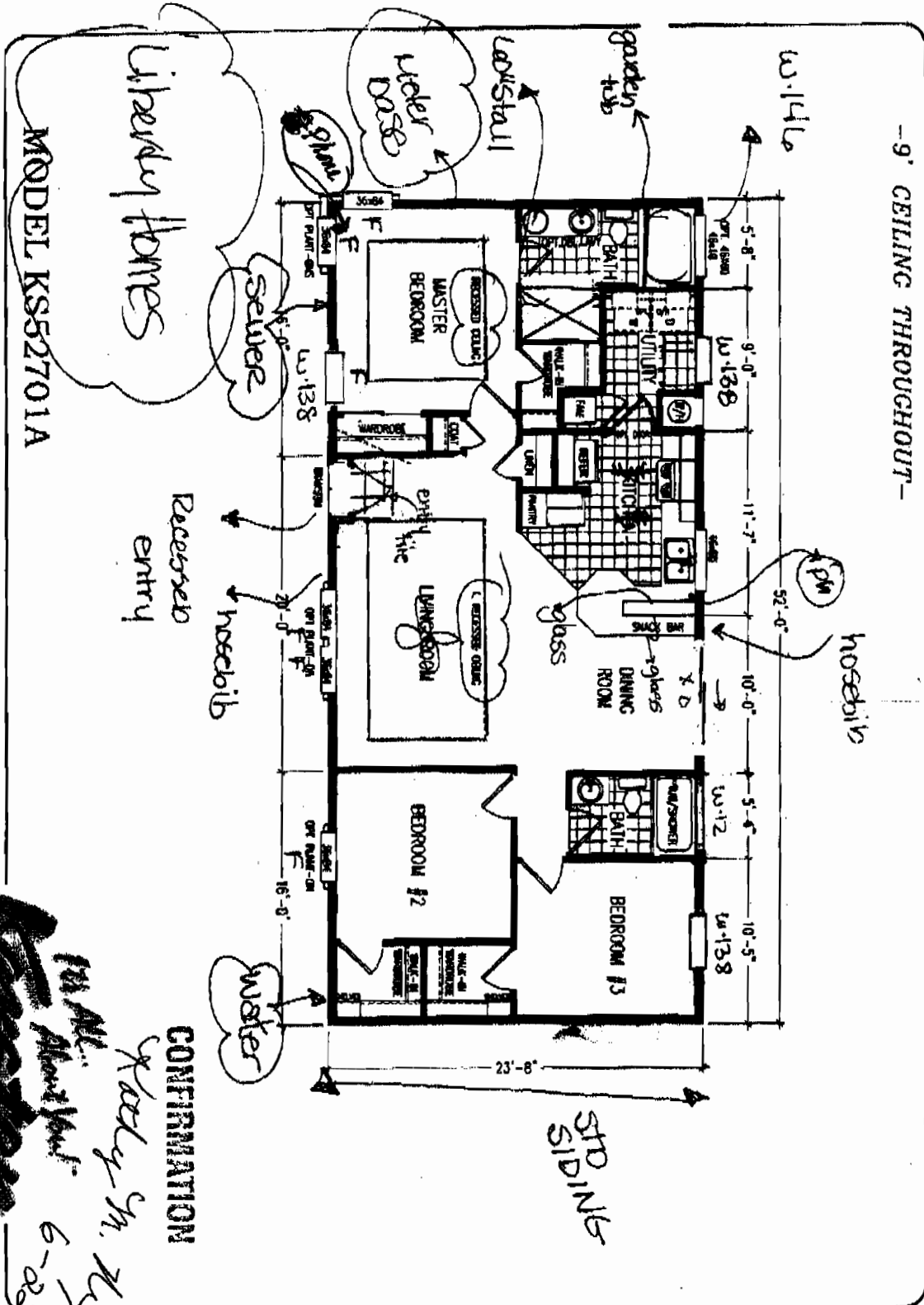
Daryl and Kathy Nix

cc: Napa County Public Works – Nate  
Central Valley Regional Water Control Board – Mark List

# Villa 2400

1230 SQUARE FEET \* 3 BEDROOM \* 2 BATH

-9' CEILING THROUGHOUT-



CONFIRMATION

**Freedom**  
 IN ALL  
 ABOUT YOU  
 6-23-06  
 HOMES

ATTN: MARK LIST

NATHAN PENLEY  
1669 THORNWOOD DR.  
CONCORD CA, 94521  
(707) 322-4750  
(925) 687-1260

## ATTN: MARK LIST

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A VICTIM OF, I HOPE THAT YOU WILL GRANT  
US OUR PERMITS TO BUILD, SINCE WE HAD  
NO PRIOR KNOWLEDGE OF THE CEASE AND  
DISIST, AND WERE CLEARED FOR PERMITS  
ON THE 12 DAY OF SEPTEMBER 2006.

Sincerely \$ AT YOUR MERCY

NATHAN PENLEY  
\$  
FAMILY

# NOTE SECURED BY A DEED OF TRUST

Loan Number: 0171

Date: Friday, August 11, 2006

Petaluma, California

Lot 32, Neptune Court, Berryessa Highlands

Napa CA 94558-9670

Property Address

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$430,500.00 (this amount will be called "principal"), plus interest, to the order of John W. Brown and Judith B. Brown, Co-Trustees of the Brown Family Trust Dated May 15, 2006, as to an undivided 24.739% interest, Angeline McDowell and Arasimo Cataldo, as Tenants in Common, as to an undivided 23.229% interest, J.J.B. Mortgage and Investment, Inc., 401k Trust, as to an undivided 17.422% interest, J.J.B. Mortgage and Investment, Inc., Defined Benefit Pension Trust, as to an undivided 20.674% interest, Sandy Mayer, an unmarried woman, as to an undivided 2.323% interest, Ralph D. Smith, Trustee of the Ralph D. Smith Living Trust, Dated an unmarried man, as to an undivided 11.614% interest, (who will be called "Lender"). I understand that the Lender may transfer this Note. The Lender or anyone else who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder(s)."

## 2. INTEREST

I will pay interest at a yearly rate as described in paragraph 3 below.

Interest commences on Wednesday, August 16, 2006, and, if paragraph 3 reflects more than one interest rate during the loan term, the rate will change on the date which is one (1) calendar month before each Payment Start Date.

Interest will be charged on unpaid principal until the full amount of principal has been paid.

I also agree to pay interest at the rate described in paragraph 3 below on the prepaid finance charges which are a part of the principal.

## 3. PAYMENTS

My payments are ☒ Interest Only ☐ Fully Amortized ☐ Other

I will make my payments each month as follows:

Number of Payments	Payment Start Dates	Interest Rates	Payment Amounts
23	Starting October 1, 2006	12.000%	\$4,305.00
1	Starting September 1, 2008	12.000%	\$434,805.00

I will make these payments until I have paid all of the principal and interest and any other charges that I may owe under this Note. If on Monday, September 01, 2008 (the Due Date) I still owe amounts under this Note (balloon balance), I will pay all those amounts, in full, on that date.

I will make my payments payable to Redwood Trust Deed Services, Inc., P.O. Box 6875, Santa Rosa, CA 95406-0875, or at a different place if I am notified by the Note Holder or the Agent for the Note Holder.

## 4. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) **Late Charge For Overdue Payments.** If I do not pay the full amount of each monthly payment by the end of ten calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 10.00% of my overdue payment or U.S. \$5.00, whichever is more. I will pay this late charge only once on any late payment.

In the event a balloon payment is delinquent more than 10 days after the date it is due, I agree to pay a late charge in an amount equal to the maximum late charge that could have been assessed with respect to the largest single monthly installment previously due, other than the balloon payment, multiplied by the sum of one plus the number of months occurring since the late payment charge began to accrue.

(B) **Default.** If I do not pay the full amount of each monthly payment due under this Note by the date stated in paragraph 3 above, I will be in default, and the Note Holder may demand that I pay immediately all amounts that I owe under this Note.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(C) **Payment of Note Holder's Costs and Expenses.** If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back for all its costs and expenses to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees. A default upon any interest of any Note Holder shall be a default upon all interests.

## 5. BORROWER'S PAYMENTS BEFORE THEY ARE DUE - PREPAYMENT PENALTIES

Applied Business Software, Inc. (800) 833-3343

[0171/Panley]  
Note Secured by Deed of Trust Page 1 of 3

**ESCROW CLOSING STATEMENT**

Sonoma Equity Lending Corporation  
166 Kentucky Street  
Petaluma CA 94952

**Escrow Number:** 0171  
**Escrow Officer:** Sigrid Price  
**Date Recorded:**

**Borrower:** Nathan Penley, a married man, as his sole and separate property

**Property:** Lot 32, Neptune Court, Berryessa Highlands  
Napa CA 94558-9670

Page: 1

DESCRIPTION	DEBIT	CREDIT
<b>Funds Deposited To Escrow:</b>		
John W. Brown ( 24.74%)		106,500.00
Arasmo Cataldo ( 23.23%)		100,000.00
J.J.B. Mortgage and Investment, Inc. ( 17.42%)		75,000.00
J.J.B. Mortgage and Investment, Inc., Defined Benefit Pension Tr ( 20.67%)		89,000.00
Sandy Mayer ( 2.32%)		10,000.00
Ralph D. Smith ( 11.61%)		50,000.00
<b>Demands Paid Through Escrow:</b>		
Private-Sonoma Equity Lending		
Principal	65,000.00	
	65,000.00	
<b>Payments Made on Authorization of Borrower:</b>		
<b>Costs and Expenses:</b>		
Appraisal Fee	150.00	
Escrow Fee	504.00	
Title Insurance Policy	1,250.00	
Notary Fee	40.00	
Recording Fees	65.00	
Underwriting Fee-Sonoma Equity Lending	400.00	
Document Preparation Fee-Sonoma Equity Lending	250.00	
Broker Processing Fee-Mortgage Broker	650.00	
Construction Funds Account	345,000.00	
Construction funds set-up fee	350.00	
Construction Draw Inspections	500.00	
<b>Other Items Paid Through Escrow:</b>		
Broker's Commission	14,619.78	
Prepaid Interest From 08/16/06 To 09/01/06 @ \$141.53/day	2,264.48	
<b>Check From Borrower</b>		543.26
<b>Totals</b>	<b>431,043.26</b>	<b>431,043.26</b>



ITEMS: (continued)

Title No. 06-280100596  
Locate No. CAFNT0928-0928-0001-0280100596

**6. A deed of trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby**

Amount: \$65,000.00  
Dated: May 8, 2006  
Trustor: Nathan Penley, a married man as sole and separate property  
Trustee: Redwood Trust Deed Services, Inc.  
Beneficiary: J.J.B. Mortgage and Investment, Inc., Defined Benefit Pension Trust, as tian undivided 84.615%, Sandy Mayer, an unmarried woman, as to an undivided 15.385% interest  
Address: P.O. Box 6875  
Santa Rosa, CA 95406-0875  
Loan No.: 0138  
Recorded: May 17, 2006, Instrument No. 2006-17383, of Official Records

*Phone 523-4388*  
*546-4842*  
*Loan Servicing*

**END OF ITEMS**

**Note 1.** The current owner does NOT qualify for the \$20.00 discount pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs for the herein described property.

**Note 2.** Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts are:

Tax Identification No.: 019-421-007  
Fiscal Year: 2005 - 2006  
1st Installment: \$204.99  
2nd Installment: \$204.99  
Exemption: \$0.00  
Land: \$14,858.00  
Improvements: \$0.00  
Personal Property: \$0.00  
Code Area: 072-112

**Note 3.** The only deeds affecting said land, which recorded within twenty-four (24) months of the date of this report, as are follows:

Grantor: Univseral Life Church, Inc.  
Grantee: Nathan Penley, a married man as his sole and separate property  
Recorded: May 17, 2006, Instrument No. 2006-0017381, of Official Records

and  
Grantor: Andrea J. Penley  
Grantee: Nathan Penley, a married man as sole and separate property  
Recorded: May 17, 2006, Instrument No. 2006-0017382, of Official Records

Title No. 06-280100596  
Locate No. CAFNT0928-0928-0001-0280100596

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

The land referred to herein is situated in the State of California, County of Napa, Unincorporated Area, and is described as follows:

Lot 32, of Berryessa Highlands No. 2, as per map recorded in Book 9, Page 37 to 47 inclusive of Maps, in the office of the County Recorder of said county.

APN: 019-421-007

September 28, 2006

Mr. List,

In regards to the Cease and Desist Order in Berryessa Highlands, to say we were blind-sided would be an understatement. The week prior I in fact inquired at the Public Works Dept. if anything was pending or going on that might affect my upcoming projects. I was told no, nothing was pending and if there were, they would of course let us (me) know as we would have the usual ninety days heads up. Pending rate increases etc. To what extent the Public Works Dept. and Building Dept. were surprised by this extreme measure taken by the Central Valley Regional Water Quality Control Board is yet to be revealed, but without any doubt we have truth of disclosure issues that must be dealt with and people held accountable for. We see the sequence of events that have transpired since 1995 and that of course has raised many questions.

I was encouraged after speaking to you Mr. List and to Mr. Childs that you would consider the predicament and hardship this connection ban would cause those of us that have building permits in the works. Let me assure you this ban will have no less than a devastating financial affect on my family and I. Those who have invested much, have much to loose.

My permit for one of my projects arrived from the Third Party Plan Checker (The Phillips Group) the day before your notice, stamped and approved ready to go. Needing a couple signatures-that usually takes three to five working days to complete and might I note my water and sewer hookup fee had been paid March of last year! That house was to close escrow Tuesday, September 19<sup>th</sup>. These people, the Bacinetts, were devastated. They have already packed half their house and were looking forward to building their dream home. Those dreams were shattered and now what will you do about it?

Every penny I have is tied up in six properties up here in the Highlands. Friends (the Jessens) and family have a total of \$445,000 tied up with interest payments accruing monthly. We have another project that our permit was approximately two weeks out and should be ready to go before the October 26<sup>th</sup> meeting. I would ask you to at the very least release those permits so we can recover a small portion of our investment. If we knew there was a remote chance something like this could happen let alone that it was pending we would have obviously not have invested our future as we did. As it stands, I could loose everything and then some.

As a way to resolve the immediate problem; why doesn't the County get some rental tanks and truck out the waste and process it at the Napa City Facility, they have put us in this predicament and should make every effort to resolve this situation. It's obvious the rate increases were too little too late. Why? Obviously the County should be applying for grants and sewer permit fees should be increased along with monthly rates.

Also why in the world has Steele Park Resort been able to still rent spaces that over tax the sewer system on weekends and how many of their trailers that were never

supposed to be year around residents contributing to our problem? And how much has Steele Park contributed monetarily to resolve it?

In total myself, family, and friends have over \$700,000 in properties and permits that is accruing interest daily. Our investment are frozen on account of us being mislead and uninformed over the last ten years. A subdivision built for 600 homes and it can't handle half that many?

Our future is in your hands, the affects of this Cease and Desist Order are more far reaching than you can imagine.

Devastated,

*Mike Raymond*  
Mike Raymond



# COUNTY of NAPA

OFFICE OF CONSERVATION, DEVELOPMENT & PLANNING

## BUILDING INSPECTION DIVISION

HILLARY GITELMAN  
Director

PATRICK LYNCH, AICP  
Assistant Director

DARRELL MAYES  
Chief Building Official

★  
VACANT  
Plans & Permits  
Supervisor

RANDY SCHMELING  
Plans Examiner

JOHN KAYLOR  
Plans Examiner

STACIE VAZQUEZ  
Plans Examiner

OLAF KLASCHIK  
Plans Examiner

CHRISTINA BEYE  
Permit Technician

★  
MAC MACCOLL  
Supervisor

JOHN MORROW  
Building Inspector

DAVID DELONG  
Building Inspector

RICK BLAIR  
Building Inspector

JOHN HAMMOND  
Building Inspector

CARL BAKKEN  
Building Inspector

GREG BAXTER  
Building Inspector

★  
ED COLBY  
Code Compliance/  
Planner

1195 THIRD STREET  
SUITE 210

★  
NAPA, CALIFORNIA  
94559

★  
TELEPHONE:  
707-253-4417

★  
FAX:  
707-253-4336

★  
WWW.CO.NAPA.CA.US

September 28, 2006

California Region Water Quality Control Board

Attn: Mark List

11020 Sun Center Drive #200

Rancho Cordova, CA 95670-6114

Re: B06-01305; Johnpeer Property at 1122 Rimrock Drive

To whom it may concern:

Napa County requires that applicants submit to our department to obtain the proper permits prior to any construction on their lots. During the process of approving their plans the applicant is required to get clearance from the various departments in the County that have jurisdiction over their area.

The above owner has followed this process and was at the end of it and ready to pull their building permit when the moratorium was placed on their lot.

We ask that you please take this into consideration as you make your decision on whether to allow this property to be exempt from the moratorium or not.

Thank you.

Napa County Building Department



# COUNTY of NAPA

OFFICE OF CONSERVATION, DEVELOPMENT & PLANNING

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September 28, 2006

California Region Water Quality Control Board  
Attn: Mark List  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Re: B06-01258 – Nix Property at 4645 Monticello Road

To whom it may concern:

Napa County requires that applicants submit to our department to obtain the proper permits prior to any construction on their lots. During the process of approving their plans the applicant is required to get clearance from the various departments in the County that have jurisdiction over their area.

The above owner has followed this process and was at the end of it and ready to pull their building permit when the moratorium was placed on their lot.

We ask that you please take this into consideration as you make your decision on whether to allow this property to be exempt from the moratorium or not.

Thank you.

Napa County Building Department



# COUNTY of NAPA

OFFICE OF CONSERVATION, DEVELOPMENT & PLANNING

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September 28, 2006

California Region Water Quality Control Board  
Attn: Mark List  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Re: B06-01142 – Penley Property at Neptune Way

To whom it may concern:

Napa County requires that applicants submit to our department to obtain the proper permits prior to any construction on their lots. During the process of approving their plans the applicant is required to get clearance from the various departments in the County that have jurisdiction over their area.

The above owner has followed this process and was at the end of it and ready to pull their building permit when the moratorium was placed on their lot.

We ask that you please take this into consideration as you make your decision on whether to allow this property to be exempt from the moratorium or not.

Thank you.

Napa County Building Department



**COUNTY of NAPA**  
OFFICE OF CONSERVATION, DEVELOPMENT & PLANNING  
**BUILDING INSPECTION DIVISION**

HILLARY GITELMAN  
Director

PATRICK LYNCH, AICP  
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+

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September 28, 2006

California Region Water Quality Control Board  
Attn: Mark List  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Re: B06-01338 -- Raymond Property at 1020 Overland Drive  
B06-01374 -- Raymond Property at 342 Black Oak Lane

To whom it may concern:

Napa County requires that applicants submit to our department to obtain the proper permits prior to any construction on their lots. During the process of approving their plans the applicant is required to get clearance from the various departments in the County that have jurisdiction over their area.

The above owner has followed this process and was at the end of it and ready to pull their building permit when the moratorium was placed on their lot.

We ask that you please take this into consideration as you make your decision on whether to allow this property to be exempt from the moratorium or not.

Thank you.

Napa County Building Department



***DARYL & KATHY NIX***  
***4645 Monticello Road***  
***Napa, CA 94558***  
***707-252-9564***  
***707-252-6814 Fax***

***TO: Mark List***

***FROM: Daryl & Kathy***

***DATE: 9-29-06***

***RE: Request for Designated Party status for***  
***Oct. 26/27<sup>th</sup> 2006 Public Hearing***  
***concerning Cease and Desist Order.***

*I am mailing the originals today to you... thank you*  
*for you help in this matter!!*

*Kathy Nix*

September 28, 2006

**REQUEST STATUS AS A DESIGNATED PARTY FOR: October 26/27<sup>th</sup> 2006  
Public Hearing concerning Cease and Desist Order for Napa Berryessa Resort  
Improvement District Wastewater Treatment System Napa County**

TO: STATE OF CALIFORNIA  
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114  
*Attn: Mark List*

FROM: DARYL & KATHY NIX  
4645 Monticello Road  
Napa CA 94558  
707-252-9564  
707-252-6814 Fax

RE: PROPERTY LOCATED IN BERRYESSA HIGHLANDS  
LOT # 98 BAHIA VISTA - APN# 019-451-014-000, NAPA COUNTY, NAPA CA  
OWNERS: DARYL & KATHY NIX

**To Whom It May Concern:**

We are writing this letter to request a status of Designated Party for the upcoming Public Hearing concerning the Cease and Desist Order proposed for Napa Berryessa Resort Improvement District Wastewater Treatment System. We are requesting this status and asking for an exception to this order under the conditions stated in 14a of the proposed Cease and Desist Order.

1. All requirements of Napa County Planning and Building Department were complete and approved prior to September 12, 2006, except for the fees to be paid which we usually do all in one day, then pick up the issued permit. The permit was ready to be issued prior to the C & D Order for at least 2 weeks. We were not in a hurry because we were not starting the project until September 18, 2006. Exhibit A attached
2. Napa County Public Works sent us a letter the day of the C & D Order stating the approval from their department and the conditions when starting.  
See Exhibit B attached
3. We started the permit process July 26, 2006 – Application # B06-01258  
See Exhibit C attached

Request for Exception based on 14a of the proposed Cease and Desist Order:

We are asking to be given this exception in the C & D Order because other than having the permit in hand, we had completed everything necessary to have a right to it. We were hours away from being unaffected by this order, unlike others only starting the process or planning on future projects. It is our understanding that there are only three others caught in the detrimental position that we are. This clearly qualifies for an exception based on # 14a of the C & D Order, if we had approval prior to September 12, 2006 and had just not picked up the issued permit. Under these circumstances, we are asking to be allowed to get our permit issued and be able to hook up to the water and sewer system.

Our Position in the Lake Berryessa Community:

We have been Pastors of the Community Church of Lake Berryessa for the past 7 years, as well as owners of a small family business doing development of single family homes in the Berryessa Highlands. We work both jobs because the Church is not able to give us enough to live on. We have been developing homes one at a time for the past 3 - 4 years. This has been able to sustain our family and the Church with the proceeds we make on these homes. Our development work in our business and the financial support that brings in tithes to the Church has literally kept the doors open. We depend on the income for daily provision. The Church has become a distribution center for food for the needy in the community through the Napa Food Bank monthly, as well as a weekly program developed by the Church family each Thursday. This Church has also been a source for rehabilitation from drugs and alcohol in which many lives have been transformed into becoming useful citizens.

Conditions and Effects Caused by this Cease and Desist Order:

We are a small family developer, husband, wife and son. With each project we have to get a lot and construction loan to develop each home. On this project we have a loan for \$250,000. When the Cease and Desist Order stopped us, it then gave us absolutely NO OPTIONS. We have no way to pay this loan, we are stuck with no where to turn. We cannot sell the lot and we cannot refinance. All construction loans are short term and this one is due in January 2007. The only thing the mortgage company could do is foreclose on us. We can do nothing but be financially ruined.

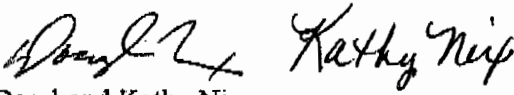
As part of our development, we put Manufactured Homes on some of the projects. Kathy is a Manufactured Home Dealer with the State of California Dept. of Housing and Community Development. She ordered a home for this lot and paid out of the construction loan \$24,105 to the wholesaler. She now owes the balance and has no way to pay for the home that is now completed and waiting at the factory for delivery to the site. Without the permit she cannot draw on the loan again. The corporate office is

meeting to decide on whether they are going to take back the home and relinquish her status with their company so that she will not be able to purchase any more home from the Karsten Company of Sacramento. This would be detrimental to our good standing with the Manufactured Home Industry which is a substantial part of our income.

This "will" financially ruin us if we are not able to proceed with our permit and this project located on Lot # 98 Bahia Vista in the Berryessa Highlands. We have done everything in good faith according to the laws of Napa County and this State in getting an approval for our permit. We feel that since we had approval on this project and had just not picked up the issued permit, we are the exception according to #14a in the Cease and Desist Order and should be given grace to proceed with our permit.

We are praying that this can be resolved quickly, as at this point our income source has stopped and we are in a drastic situation. Thank you in advance for your help in this matter.

Very Sincerely,

  
Daryl and Kathy Nix

cc. Napa County Public Works- Nate  
Diane Dillion, Napa County Supervisor - District 3

Exhibit A**COUNTY of NAPA**

OFFICE OF CONSERVATION, DEVELOPMENT &amp; PLANNING

**BUILDING INSPECTION DIVISION**HILLARY GITELMAN  
DirectorPATRICK LYNCH, AICP  
Assistant DirectorDARRELL MAYES  
Chief Building OfficialVACANT  
Plans & Permits  
SupervisorRANDY SCHMELING  
Plans ExaminerJOHN KAYLOR  
Plans ExaminerSTACIE VAZQUEZ  
Plans ExaminerOLAF KLASCHIK  
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Building InspectorDAVID DELONG  
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Building InspectorJOHN HAMMOND  
Building InspectorCARL BAKKEN  
Building InspectorGREG BAXTER  
Building InspectorED COLBY  
Code Compliance/  
Planner1195 THIRD STREET  
SUITE 210NAPA, CALIFORNIA  
94559TELEPHONE:  
707-253-4417FAX:  
707-253-4336

WWW.CO.NAPA.CA.US

September 28, 2006

California Region Water Quality Control Board

Attn: Mark List

11020 Sun Center Drive #200

Rancho Cordova, CA 95670-6114

Re: B06-01258 – Nix Property at Parcel # 019-451-014-000

(Note: Parcel has not yet been assigned a street address.)

To whom it may concern:

Napa County requires that applicants submit to our department to obtain the proper permits prior to any construction on their lots. During the process of approving their plans the applicant is required to get clearance from the various departments in the County that have jurisdiction over their area.

The above owner has followed this process and was at the end of it and ready to pull their building permit when the moratorium was placed on their lot.

We ask that you please take this into consideration as you make your decision on whether to allow this property to be exempt from the moratorium or not.

Thank you.

Napa County Building Department

Eric Banvard  
Plans & Permits Supervisor

Exhibit B**COUNTY of NAPA**

**ROBERT J. PETERSON, P.E.**  
Director of Public Works  
County Surveyor-County Engineer  
Road Commissioner

**DONALD G. RIDENHOUR, P.E.**  
Assistant Director of Public Works

September 12, 2006

Permit #: B06-01258

APN#: 019-451-014, Lot 98 Bahia Vista Ct., Berryessa Highlands, Napa, CA  
Public Works Plan Review

Kathy Nix  
4645 Monticello Rd  
Napa, CA 94558  
Re: Conditions of Approval, Public Works

Description: New MFG Home on Permanent Foundation

Dear Ms. Nix

Upon the issuance of the above named permit by the Napa County Conservation and Building Department, the following conditions will apply.

As of September 15<sup>th</sup>, 2004 Napa County Public Works has begun reviewing building plans for conformance to National Pollutant Discharge Elimination Systems (NPDES). To fulfill the requirements of County Code the following conditions must be addressed during construction. Failure to follow the County guidelines for Stormwater Management and Discharge Control may result in work stoppage, a written citation, monetary fine or any combination thereof.

1. You must contact this office 48 hours prior to beginning any earthmoving activities related to the above named permit.
2. The property owner will be held responsible for any violation of County Stormwater Ordinance (1240).
3. The property owner or his/her designee must understand all parts of these conditions and must maintain the construction site in compliance during all phases of construction.
4. The property owner or his/her designee must inform all workers involved with the construction of these conditions.
5. Preventative stormwater pollution measures must be in place and effective prior to predicted rainfall to protect stormwater conveyance ways from any illicit discharge resulting from activities related to the above named permit.

6. Provide, and maintain a Concrete washout. All construction projects using concrete must now specify and use a washbasin for cleaning equipment and are required to maintain it during use.
7. Provide a stabilized construction exit from the site if vehicles will be leaving the property during wet weather. Action must be taken to prevent vehicles leaving the construction site from tracking soils onto any publicly maintained roadways.
8. All temporary stockpiles of soils must be covered or contained so that stormwater runoff does not produce increased erosion. The permanent placement of soils requires measures to be taken to insure soils will not be washed away (i.e. Compaction, seeding, mulching, erosion blankets) during stormwater flows.
9. The roadway and gutter areas adjacent to the construction property must remain free of soils or other erodible construction materials prior to and during stormwater flows.
10. Downspouts, drainage swales or the creation of other stormwater conveyance ways must be installed using credible best management practices in order to reduce soil erosion to the maximum extent practical.
11. No grading work on slopes exceeding 5% shall be done between October 15<sup>th</sup>, 2006 and April 1<sup>st</sup>, 2007.

Below are two websites that provide information regarding stormwater best management practices and Napa County Code 1240 online for your reference:

<http://www.swrcb.ca.gov/rwqcb1/programs/npdesstorm.html>  
[www.cabmphandbooks.com](http://www.cabmphandbooks.com)

<http://napacounty/code2000updates/1240.htm>

Please contact Tracy Arensberg of this Department if you have any questions regarding the implementation of any of the above conditions.

Sincerely,

Robert J. Peterson,  
Director of Public Works



Jeannette Doss  
Junior Engineer

Accela Automation: ShowPayDetail40 - T8108-D

Page 1 of 1

**RECEIPT**

**NAPA COUNTY**  
**1195 THIRD STREET**  
**SUITE 210**  
**Napa, CA 94559**

Exhibit C**Application:** B06-01258**Application Type:** Building / Mobile Home / MFG Home Permanent Foundation / New**Address:** CA**Owner Name:** Kathy and Daryl Nix**Owner Address:** 4645 Monticello Rd, Napa, CA 94558

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<b>Receipt No.:</b>	58398				
<b>Payment Method</b>	<b>Ref Number</b>	<b>Amount Paid</b>	<b>Payment Date</b>	<b>Cashier ID</b>	<b>Comments</b>
Check	6514	\$187.00	07/26/2006 01:17:22 PM	CBEYE	

**Owner Info.:** Kathy and Daryl Nix  
4645 Monticello Rd  
Napa, CA 94558

**Work Description:** MH on permanent foundation w/ garage

T8108-D  
Version 4.0





**Brain D. Johnpeer  
Racquel Johnpeer  
6109 Alpine Springs Way  
Elk Grove, CA 95758  
707-826-2920  
707-691-5022**

**TO:** Mark List

**FROM:** Brian

**DATE:** 9-29-06

**RE:** Request for Designated Party

September 28, 2006

**REQUEST STATUS AS A DESIGNATED PARTY FOR: October 26/27<sup>th</sup> 2006  
Public Hearing concerning Cease and Desist Order for Napa Berryessa Resort  
Improvement District Wastewater Treatment System Napa County**

TO: STATE OF CALIFORNIA  
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

FROM: BRIAN & RACQUEL JOHNPEER  
6109 Alpine Springs Road  
Elk Grove, CA 95758  
916-826-2920  
916-691-5022 Fax

RE: Property located at: 1122 Rimrock Drive, Berryessa Highlands in Napa CA  
APN# 019-382-007  
Owners: Brian & Racquel Johnpeer

To Whom It May Concern:

We are writing this letter to request a status of Designated Party for the Public Hearing concerning the Cease and Desist Order proposed for the Napa Berryessa Resort Improvement District Wastewater Treatment System. We are requesting this status because we feel we are more than just an interested party, we have been directly effected by this proposed order and stand to suffer under the decision to implement this order. We are requesting this status and asking for an exception to this order under the conditions stated in # 14a of the proposed Cease and Desist Order.

1. All the requirements of the Napa County Planning and Building Department were complete and approved prior to September 12, 2006, except for the fees to be paid. We already had approval and just had to pay the fees and pick up the issued permit.  
See Attached Letter- Exhibit A
2. Napa County Public Works sent us a letter September 11, 2006 stating that we had approval and what the conditions were that we apply once started.  
See Attached Letter- Exhibit B
3. We started the permit process on August 4, 2006 – Application B06-01305  
See Attached – Exhibit C

Request for Exception – 14a of Cease and Desist Order

The main reason we should be accepted for this Request for Exception under 14a is that we were already approved by the Napa County Planning and Building and ready to start after picking up the issued permit. Our start date was to be September 15, 2006. Our approval with the Napa County was prior to the Cease and Desist Order issued on September 12, 2006. We are asking to be allowed to proceed with drawing our permit and being able to be hooked up to the sewer and water at 1122 Rimrock Dr. in the Berryessa Highlands. We are not in the category with others that had not yet been approved therefore we believe we should be given this request for exception.

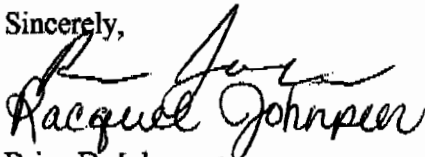
Problems Caused by this Cease and Desist Order:

We are a family who work hard to support our 4 children and to get ahead to secure the future for all of us. We have recently invested in development projects in the Berryessa Highlands after being encouraged by the success of my mom and step father, Daryl and Kathy Nix. We invested in this region unknowing of any problems that could arise. Not only did we take an equity line from our own home for this project, but my disabled father in New York did as well to be an investor. Both of us stand to lose our homes if we are not able to proceed with this project on Rimrock Drive in the Berryessa Highlands. We also have a loan on the lot and construction that is to be preformed on Rimrock Drive. We absolutely have been placed in a position that we can "do nothing" to pay for this loan. We will not be able to sell the lot or refinance this construction loan which is due in February 2007. That means our only alternative is facing foreclosure.

This has caused tremendous stress and upset for our whole family. We have basically been trapped in a position that we can do nothing about. We have done everything in good faith according all the requirements of the County of Napa and the State of California in working to get our permit. We believe that since we already had approval from the County when the proposed Cease and Desist Order came in on September 12, 2006, that we should be allowed to proceed and have our issued permit.

This situation has the potential to become drastic for our family and we are asking that you make an exception for us based on #14a in the Cease and Desist Order. Thank you for your help in this matter.

Sincerely,



Brian D. Johnpeer  
Racquel Johnpeer



*Exhibit A*

# COUNTY of NAPA

OFFICE OF CONSERVATION, DEVELOPMENT &amp; PLANNING

BUILDING INSPECTION DIVISION

HILLARY GITELMAN  
Director

PATRICK LYNCH, AICP  
Assistant Director

DARRELL MAYES  
Chief Building Official

VACANT  
Plans & Permits  
Supervisor

RANDY SCHMELING  
Plans Examiner

JOHN KAYLOR  
Plans Examiner

STACIE VAZQUEZ  
Plans Examiner

OLAF KLASCHIK  
Plans Examiner

CHRISTINA BEYE  
Permit Technician

MAC MACCOLL  
Supervisor

JOHN MORROW  
Building Inspector

DAVID DELONG  
Building Inspector

RICK BLAIR  
Building Inspector

JOHN HAMMOND  
Building Inspector

CARL BAKKEN  
Building Inspector

GREG BAXTER  
Building Inspector

ED COLBY  
Code Compliance/  
Planner

September 28, 2006

California Region Water Quality Control Board  
Attn: Mark List  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Re: B06-01305; Johnpeer Property at 1122 Rimrock Drive

To whom it may concern:

Napa County requires that applicants submit to our department to obtain the proper permits prior to any construction on their lots. During the process of approving their plans the applicant is required to get clearance from the various departments in the County that have jurisdiction over their area.

The above owner has followed this process and was at the end of it and ready to pull their building permit when the moratorium was placed on their lot.

We ask that you please take this into consideration as you make your decision on whether to allow this property to be exempt from the moratorium or not.

Thank you.

*Eric Banvard*  
Napa County Building Department

*Eric Banvard*  
Plans & Permits Supervisor

1195 THIRD STREET  
SUITE 210

NAPA, CALIFORNIA  
94559

TELEPHONE:  
707-253-4417

FAX:  
707-253-4336

WWW.CO.NAPA.CA.US

Accela Automation: ShowPayDetail40 - T8108-D

Page 1 of 1

**RECEIPT**

**NAPA COUNTY**  
**1195 THIRD STREET**  
**SUITE 210**  
**Napa, CA 94559**

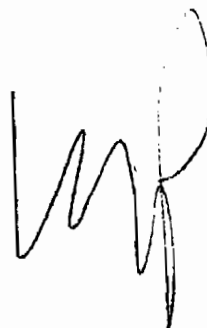
Exhibit C**Application:** B06-01305**Application Type:** Building / Mobile Home / MFG Home Permanent Foundation / New**Address:** 1122 RIMROCK DRIVE, NAPA, CA**Owner Name:** JOHNPEER BRIAN & RACQUEL**Owner Address:** 6109 ALPINE SPRING WY, ELK GROVE, CA 95758**Receipt No.:** 58571

<b>Payment Method</b>	<b>Ref Number</b>	<b>Amount Paid</b>	<b>Payment Date</b>	<b>Cashier ID</b>	<b>Comments</b>
Check	3152 <i>pd</i>	<del>\$315.00</del>	08/04/2006 08:58:08 AM	SPUTNAM	

**Owner Info.:** JOHNPEER BRIAN & RACQUEL  
6109 ALPINE SPRING WY  
ELK GROVE, CA 95758

**Work Description:** MANUFACTURED/MOBILE HOME ( 52 x 27) ON PERM. FOUNDATION

T8108-D  
Version 4.0



**Brain D. Johnpeer**  
**Racquel Johnpeer**  
**6109 Alpine Springs Way**  
**Elk Grove, CA 95758**  
**707-826-2920**  
**707-691-5022**

**TO:** Mark List

**FROM:** Brian Johnpeer

**DATE:** 9-29, 2006

**RE:** Permit # B06-01305

NAPA County



# COUNTY of NAPA

OFFICE OF CONSERVATION, DEVELOPMENT &amp; PLANNING

## BUILDING INSPECTION DIVISION

HILARY GITELMAN  
Director

PATRICK LYNCH, AICP  
Assistant Director

DARRELL MAYES  
Chief Building Official

VACANT  
Plans & Permits  
Supervisor

RANDY SCHMELING  
Plans Examiner

JOHN KAYLOR  
Plans Examiner

STACIE VAZQUEZ  
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OLAF KLASCHIK  
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CHRISTINA BEYE  
Permit Technician

MAG MACCOLL  
Supervisor

JOHN MORROW  
Building Inspector

DAVID DELONG  
Building Inspector

ROCK BLAIR  
Building Inspector

JOHN HAMMOND  
Building Inspector

CARL BAKKEN  
Building Inspector

GREG BAXTER  
Building Inspector

ED COLBY  
Code Compliance/  
Planner

September 28, 2006

California Region Water Quality Control Board  
Attn: Mark List  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Re: B06-01305; Johnpeer Property at 1122 Rimrock Drive

To whom it may concern:

Napa County requires that applicants submit to our department to obtain the proper permits prior to any construction on their lots. During the process of approving their plans the applicant is required to get clearance from the various departments in the County that have jurisdiction over their area.

The above owner has followed this process and was at the end of it and ready to pull their building permit when the moratorium was placed on their lot.

We ask that you please take this into consideration as you make your decision on whether to allow this property to be exempt from the moratorium or not.

Thank you.

*Eric Banvard*  
Napa County Building Department

*Eric Banvard*  
Plans & Permits Supervisor

1195 THIRD STREET  
SUITE 210

NAPA, CALIFORNIA  
94559

TELEPHONE:  
707-253-4417

FAX:  
707-253-4336

WWW.CO.NAPA.CA.US



Exhibit B

## COUNTY of NAPA

ROBERT J. PETERSON, P.E.  
Director of Public Works  
County Surveyor-County-Engineer  
Road Commissioner

DONALD G. RIDENHOUR, P.E.  
Assistant Director of Public Works

September 11, 2006

Permit #: B06-01305  
APN#: 019-382-007, 1122 Rimrock Drive, Napa, CA  
Public Works Plan Review

Brian Johnpeer  
6109 Alpine Spring Way  
Elk Grove, CA 95758  
Re: Conditions of Approval, Public Works

Description: MFG Home Permanent Foundation / New

Dear Mr. Johnpeer

Upon the issuance of the above named permit by the Napa County Conservation and Building Department, the following conditions will apply.

As of September 15<sup>th</sup>, 2004 Napa County Public Works has begun reviewing building plans for conformance to National Pollutant Discharge Elimination Systems (NPDES). To fulfill the requirements of County Code the following conditions must be addressed during construction. Failure to follow the County guidelines for Stormwater Management and Discharge Control may result in work stoppage, a written citation, monetary fine or any combination thereof.

1. You must contact this office 48 hours prior to beginning any earthmoving activities related to the above named permit.
2. The property owner will be held responsible for any violation of County Stormwater Ordinance (1240).
3. The property owner or his/her designee must understand all parts of these conditions and must maintain the construction site in compliance during all phases of construction.
4. The property owner or his/her designee must inform all workers involved with the construction of these conditions.
5. Preventative stormwater pollution measures must be in place and effective prior to predicted rainfall to protect stormwater conveyance ways from any illicit discharge resulting from activities related to the above named permit.

NAPA COUNTY DEPARTMENT OF PUBLIC WORKS  
1195 Third Street • Suite 201 • Napa, CA 94559 • (707) 253-4351  
www.co.napa.ca.us FAX (707) 253-4627



6. **Provide, and maintain a Concrete washout.** All construction projects using concrete must now specify and use a washbasin for cleaning equipment and are required to maintain it during use.
7. Provide a stabilized construction exit from the site if vehicles will be leaving the property during wet weather. Action must be taken to prevent vehicles leaving the construction site from tracking soils onto any publicly maintained roadways.
8. All temporary stockpiles of soils must be covered or contained so that stormwater runoff does not produce increased erosion. The permanent placement of soils requires measures to be taken to insure soils will not be washed away (i.e. Compaction, seeding, mulching, erosion blankets) during stormwater flows.
9. The roadway and gutter areas adjacent to the construction property must remain free of soils or other erodible construction materials prior to and during stormwater flows.
10. Downspouts, drainage swales or the creation of other stormwater conveyance ways must be installed using credible best management practices in order to reduce soil erosion to the maximum extent practical.

Below are two websites that provide information regarding stormwater best management practices and Napa County Code 1240 online for your reference:

<http://www.swrcb.ca.gov/rwqcb1/programs/npdesstorm.html>  
[www.cabmphandbooks.com](http://www.cabmphandbooks.com)

<http://napacounty/code2000updates/1240.htm>

Please contact Tracy Arensberg of this Department if you have any questions regarding the implementation of any of the above conditions.

Sincerely,

Robert J. Peterson,  
Director of Public Works



Jeannette Doss  
Junior Engineer

# FACSIMILE TRANSMISSION

## RESIDENTIAL DESIGN SERVICES

254 CIRCLE OAKS DRIVE NAPA CALIFORNIA 94558

PHONE: (707) 251-9677 FAX: (707) 251-8777 CELL: (707) 337-4144

DATE: 9 / 26 / 2006

REFERENCE: C&amp;D ORDER

TO: MARK LIST

NAPA/BERRYESSA  
FROM: David D. Horobin, Principal

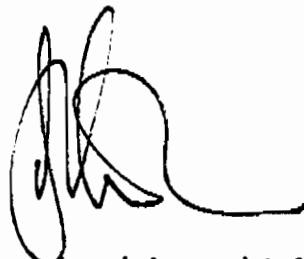
FAX NUMBER: (916) 464-4780

NUMBER OF PAGES BEING TRANSMITTED (Including this cover sheet):

1 2 3 4 5 6 7 8 9 10 ( )

Dear MARK.:

LETTER AS PROMISED RE:

RUSS LEE PROPERTY  
BERRYESSA.☒ THIS FAX IS URGENT!☐ Correspondence Attached:☐ Drawings Attached:☒ Please acknowledge receipt of this fax A.S.A.P.:☐ Specifications Attached:☐ Invoice Attached:☐ Proposal Attached:☐ Hard Copy In Mail:

THIS FACSIMILE IS BEING TRANSMITTED AND IS CONFIDENTIAL TO THE PERSON WHOSE NAME APPEARS ABOVE AND TO NO OTHER. SHOULD THIS FAX, FOR ANY REASON WHATSOEVER, HAVE BEEN TRANSMITTED TO THE WRONG NUMBER OR PERSON, PLEASE INFORM RESIDENTIAL DESIGN SERVICES IMMEDIATELY AT THIS NUMBER:

IF ANY PAGES ARE MISSING OR ILLEGIBLE, PLEASE CALL (707) 251-9677

***Residential Design Services***

*254 Circle Oaks Drive  
Napa, CA 94558 USA  
(707) 251-9677  
dhorabin@earthlink.net*

September 26, 2006

Mark List

California Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, # 200  
Rancho Cordova, CA 95670-6114  
By facsimile (916) 464-4780

Re: 191 Woodhaven Court, Berryessa Highlands, Napa, CA,  
(owned by Mr. & Mrs. Russell Lee)  
as it pertains to the Berryessa Highlands/NBRID C&D Order

Dear Mr. List:

It is with immense regret that I write this letter to you (with copies to all the Napa County Board of Supervisors) under such extreme circumstances.

My clients, Mr. & Mrs. Russell Lee of Santa Rosa purchased the lot referred to above approximately 3 months ago. I have been a consultant to them for many years and am fully aware of their long time desire to purchase a beautiful piece of land on which to build their dream home, so much so that I was able to help them locate such a parcel.

When they purchased the lot, I made many inquiries into services provided by the NBRID and was always given very positive feedback from their staff regarding locating sewer and water lines for us and how they could help the Lees with the hook-ups. Never, at any time, was there any comment made, either verbally or in writing, let alone receive any form of disclosure notice that the NBRID was in such drastic violation of the mandated sewage disposal standards at the time of purchase or since. Presumably, all the staff was aware of this violation and aware of the possibility of any imminent imposition from your department.

We have since discovered that the NBRID had received many notices informing them of various violations and the need to comply with your standards and also understand that many of those requests have either been ignored or at the most, a partial compliance. We understand the need to impose sanctions on what appears to be an irresponsibly managed utility, but do not believe that the intention was to create irreversible financial and emotional hardship on any property owners.

So far, my clients have spent \$125,000 on the lot, \$19,000 on my fees, approximately \$7,000 on various site engineering studies and reports, approximately \$2,000 on structural engineering. That amounts to \$153,000 that has been paid in cash. Hardly an amount any of us could invest without serious repercussions if plans don't go according to "the rules".

They also have a general contractor signed up to start the work immediately the permit is (was) to be issued and subsequently, he has all his sub-contractors lined up, committed to the project.

The "rules" to which I refer above are as follows: when this property was purchased, the Napa County Board of Supervisors knew, as did the BBRID, that there was a serious violation of disposal standards. Anyone knowledgeable of any reason as to why a property could be encumbered and prevented from the supposed use, for which the property is sold, is required to disclose that matter. My clients received nothing of the sort. No, there was no C&D Order at that point, but, as I have stated, the NCBOS and the NBRID were both aware of the problem and had a responsibility to inform those that this might affect. I have spoken to several residents of the Highlands, none of who were made aware of the apparently irresponsible violations being carried out by their own utility company and are very disturbed by the happenings. Unfortunately, it raised the question from the residents as to "what else will surface when they investigate this issue.....what else are they hiding?"

Regardless of opinions and judgment over this matter, it is my professional obligation to my clients to inform you of the unfair, unwarranted and undeserved hardship that you are all imposing on my clients who are an entirely innocent party to games that are being played with their lives and their financial investment in their dream. I have worked intensely with Mr. & Mrs. Lee and know the emotional and financial investment they have made, as well as the emotional and financial burden you now impose on them.

We will be attending your meeting at the end of October and would like to know the procedure for ensuring that we have an opportunity to speak on this matter, as well as to inform you of that wish by means of this letter. We request that you provide a grace period for those that already have their plans and investment set in stone. If it is possible to do so, we would humbly recommend that that grace period be until the end of October by which to submit plans to the building department and that all owners of properties in the Highlands be informed of this.

We would also request that you release your agenda for these two days of meetings as soon as possible so that we can plan our lives for as little inconvenience as possible, considering the enormous emotional and financial inconvenience this is causing my clients and several others.

Yours,

David D. Horobin

David D. Horobin  
Dipl.Arch.(Oxford), ATP, LRIBA

Cc: Individual Members of the Napa valley Board of Supervisors (by individual email)  
The California Building Industry Association, Mr.Robert Rivinius, President



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

29 September 2006

Mr. Robert Schneider, Chairman  
Ms. Pamela Creedon, Executive Officer  
Mr. Jack DelConte, Principal WRCE  
Ms. Wendy Wyels, Environmental Program Manager  
Mr. Mark List, Sr. Engr. Geologist  
Mr. Guy Childs, Engr. Geologist  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission  
Hardcopy if Requested

RE: Cease and Desist Order for Napa Berryessa Resort Improvement District  
Wastewater Treatment System, Napa County

Dear Messrs. Schneider, DelConte, List, Childs and Mesdames Creedon and Wyels:

The California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon (CSPA) has reviewed the Central Valley Regional Water Quality Control Board's (Regional Board) tentative Cease and Desist Order (hereinafter Order) for Napa Berryessa Resort Improvement District Wastewater Treatment System, Napa County (Discharger) and has serious concerns regarding the Order.

CSPA requests status as a designated party for this proceeding. CSPA is a 501(c)(3) public benefit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality and fishery resources and their aquatic ecosystems and associated riparian habitats. CSPA has actively promoted the protection of water quality and fisheries throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California's degraded surface and ground waters and associated fisheries. CSPA members reside, boat, fish and recreate in and along waterways throughout California, including Napa County.

Our specific comments follow:

### **1. The Order fails to require a complete I&I Assessment**

Finding No 9 states, "In April 1996, the Discharger submitted a report titled *"Capacity Study for the Wastewater Treatment and Disposal Facilities for Napa*

*Berryessa Resort Improvement District.*” In summary, the report concluded that excessive infiltration/inflow exists at the facility and significantly impacts treatment and reuse systems.” However, as indicated by Finding No. 13, the Discharger never conducted an adequate I&I assessment and the minor sewer repairs that were done were ineffectual.

After a decade of sewer spill caused by I&I problems, the Regional Board has finally decided to require the Discharge to complete an I&I study that the Discharger started in 1996. However, the CDO fails to require the Discharger to conduct a detailed I&I assessment and in fact likely sets the Discharger up for failure. Given the limited information and data requirements for the I&I study, the Discharger is likely to spend money repairing sewer line without reducing sewage spills. Indeed, this is actually what happened last time.

The reduction and control of I/I in wastewater collection systems must be considered in the context of a disciplined and planned approach with provisions for a long-term sewer maintenance program. Assessing the I&I problem is a first step: one, which the Order ignores. For I/I assessment, the most common practice is a sanitary sewer evaluation survey and workplan that involves following six measures:

- a. Quantify the I/I problem
- b. Identify the I/I sources
- c. Evaluate the cost-effective measure to reduce the I&I in a workplan
- d. Implement the workplan repairs and sewer line replacement
- e. Reassessment to evaluate if the workplan was successful
- f. Implement a sewer maintenance program for long term control

It is often said of I/I in collection systems "...you can't manage what you can't measure". The Order fails to require the Discharge to quantify the I/I problem by assessing (or measuring) the extent of the I&I problem. A creditable I&I assessment involves a two-step process. First, the Discharger must make a serious attempt to locate and record information that relates to a variety potential I&I problems including observed overflows, measured or observed surcharges, reported bypasses, customer backup complaints, and chronic maintenance activities. This information can easily be compiled from maintenance records, work orders, past studies and engineering reports, sewer maps, complaint records, various department files, and interviews with field personnel who are responsible for maintenance and management. Once the data has been collected and recorded, it can displayed and evaluated in a way that will show possible relations between overflows, bypasses and other related factors such as capacity models, rainfall records, maintenance activities, and surcharged lines. In short, the Dischargers must identify and report to the Regional Board all the possible known "hot spots" where spills are likely happen.

Based on this information, the Discharger should submit map(s) of the sewer system and plot critical areas where spills might occur. The Discharger must develop a detailed spill prevention and mitigation plan (the Order is silent on this point) that

describes in detail the steps to be taken to prevent and minimize the discharge of raw sewage to surface waters. The spill plan must also incorporate a monitoring plan with maps of the receiving waters, public access points, and sample locations so that sample can be collected and signage posted when sewage spills occur. The Order must also require that the Discharger demonstrate that they have the necessary manpower and equipment available to fully implement the spill plan. The Discharger may have to arrange lease agreements for additional vector trucks and large storage tanks if equipment cannot be purchased in time.

Smoke testing may be employed to locate I&I sources; however, during the winter season, wet soil conditions may hamper this method. The Discharger must be required to log each smoke test and photograph problem areas, such as smoke rising from gutter spouts.

The second step in quantifying I&I is to actually monitor wastewater flows at key points in the collection system. Normally, the collection system can be separated into watersheds. Watersheds can be further separated into basins and basins may be further separated into sub-basins if necessary. The Order fails to have the Discharge monitor flows in the collection system at all. Without flow monitoring the Regional Board has no possible way to determine compliance with I&I reduction except to wait for the next sewer spill.

The placement of the appropriate flow monitoring equipment is critical step and the Order must specify a minimum number of monitoring sites to be used and require that the data be reported to the Regional Board. In order to measure wastewater flows and their response to rainfall, the flow meter must record both depth and velocity of flow. (There are a number of flow meters available and some can even be rented.) The common industry practice for I&I monitoring is as follows:

- a. One meter for every 30,000 – 50,000 feet of sanitary sewer
- b. Flow meter recording set at 15-minute intervals
- c. Flow meter capable of measuring surcharge and flow reversal
- d. One rain gauge for every 2-4 flow meters
- e. Minimum monitoring period – 42 days (60 days, optimal)
- f. Measurement of 6-8 separate rainfall events
- g. Monitoring period during high seasonal groundwater

The Discharger may use simple instruments like a flow probe to measure water velocity and depth. However, flow probes do not record data. While the flow probe is good for spot flow checks or random checks of the installed flow meters, the data must also be recorded and sent to the Regional Board.

After the flow data has been tabulated, a linear regression analysis can be used to make comparisons between the measured I/I and the corresponding rainfall intensity. This regression analysis will provide two vital pieces of information to the Regional Board useful for quantifying the I/I problem. First, a regression analysis allows the

Discharger to make comparisons between each basin in order to identify the top priority basins for further study, hot spots and I/I reduction areas to focus smoke testing and line videos. Secondly, the analysis will provide useful design information for replacement sewers necessary to reduce or eliminate an overflow or bypass. Therefore, the Order must require the Discharger to conduct a linear regression analysis.

Only after the necessary information has been collected and analyzed can the Discharger prepare a meaningful I&I workplan and the Regional Board measure the Dischargers compliance with the Order. After the workplan has been completed, another round of flow monitoring is necessary in order to quantify the reductions in I&I and measure compliance with the Order.

Sewer repairs that reduce I&I are only a short term gain if the Discharger fails to implement a long term sewer maintenance schedule and then adequately staff and budget the necessary resources to implement it. The Order is silent on requirement that the Discharger demonstrate that sewer is and will be properly maintained. The Order should require the Discharger to submit a collection system maintenance manual.

Compliance Measures No. 8 and 9 must be revised to ensure that a meaningful I&I flow reduction plan is submitted and implemented by the Discharger.

## **2. The Order contains inadequate requirements for the RWD**

Compliance Measure No.11 states, “Within 60 days of the Executive Officer’s written concurrence with the *Final Wastewater Disposal Plan*, the Discharger shall submit a *Report of Waste Discharge* (RWD) to allow WDRs to be revised to reflect the proposed upgrades. The RWD consists of the Form 200 (*Application for Report of Waste Discharge*) and a technical report that addresses all items listed in Attachment B to this Order, “*Additional Information Requirements for a Report of Waste Discharge*.”

The Order’s Attachment B does not even make cursory effort to require the Discharger to demonstrate that the Final Wastewater Disposal Plan complies with Resolution 68-16. The CDO fails to require the Discharger to submit information and data sufficient to show the project will comply with BPTC and does not require a BPTC evaluation of the system and therefore, sets the Discharger up for failure. Without requiring the Discharger to conduct a BPTC assessment as part of the RWD, the CDO Final Wastewater Disposal Plan is likely to result in the Discharger spending money to construct a project only to find out at a future date that the WWTP does not comply with BPTC and must be redone. This practice is wasteful and bad engineering.

The RWD must include the following elements:

- a. All waste constituents to be discharged (see priority pollutant list);
- b. The background quality of the uppermost layer of the uppermost groundwater;



- c. Groundwater monitoring data downgradient of the existing WWTP and application area,
- d. The background quality of other waters that may be affected (discharges to reclamation canals, irrigation channels and surface waters);
- e. The detailed underlying hydrogeology conditions such as hydraulic conductivity of the soils, capillary rise, groundwater gradient; effects of pumping has groundwater, well map showing locations of all water wells including springs and isolated wetlands within one mile of the WWTP/land application;
- f. How treatment and control measures are justified as best practicable treatment and control;
- g. The extent the discharge will impact the quality of each aquifer; and
- h. The expected obtainable degree of degradation below water quality objectives

### **3. Order fails to include a Time Schedule Order**

California Water Code (CWC) Section 13000 states, in part, that Legislature declares “...that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.” CWC Section 13000 demonstrates the Legislative intent that the “state must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the state from degradation originating inside or outside the boundaries of the state.” In order to fulfill the Legislative intent to protect water quality, the State Water Resources Control Board adopted the Water Quality Enforcement Policy (Enforcement Policy) February 2002.

The Enforcement Policy states, “The primary goal of this Enforcement Policy is to create a framework for identifying and investigating instances of noncompliance, for taking enforcement actions that are appropriate in relation to the nature and severity of the violation, and for prioritizing enforcement resources to achieve maximum environmental benefits. Toward that end, it is the intent of the SWRCB that the RWQCBs operate within the framework provided by this Policy.”

The Discharger has an extensive history of violations (Finding No. 6 through 45) and has repeatedly failed to comply with Regional Board Orders. The Enforcement Policy, page 19, states, “California Water Code section 13308 authorizes the RWQCB to issue a Section 13308 Time Schedule Order (13308 TSO) which prescribes a civil penalty if compliance is not achieved in accordance with the time schedule. The RWQCB may issue a 13308 TSO if there is a threatened or continuing violation of a cleanup and abatement order, cease and desist order, or any requirement issued under California Water Code sections 13267 or 13383.” The Discharger has demonstrated a recalcitrant pattern of behavior towards the Clean Water Act, CWC and Regional Board Orders. CSPA believes, a 13308 TSO must be issued in conjunction with the CDO is appropriate.

**4. The Order fails to get cost recovery for Regional Board's staff time and rewards the Discharger by not determining the Economic Benefit from the Violations**

Regional Board members and staff have frequently excused their failure to protect water quality due to a shortage of staff resources. Yet the CDO inexplicably fails to require the Discharger to pay for cost recovery associated with the Regional Board's staff time. After the ten-year pattern of recalcitrant behavior shown by this Discharger, the Regional Board should be aware that 10 percent of the Dischargers consume 80 percent of staff resources. The Enforcement Policy, page 11, classifies the discharge of raw sewage and failure to provide reports are priority violation for which an Administrative Civil Liability Order is appropriate. Inexplicably, the Order fails to assess any penalties and is silent on the amount of economic benefit the Discharger has received from a decade of water quality violations, i.e. Finding No. 6 through 45. The Enforcement Policy, page 40, defines "Economic benefit is any savings or monetary gain derived from the acts that constitute the violation." At a minimum, the Regional Board must issue an ACLO must that recovers the economic benefit the Discharger has achieved.

The Enforcement Policy, page 41, states "Staff costs may be one of the "other factors that justice may require", and should be estimated when setting an ACL. Staff should estimate the cost that investigation of the violation and preparation of the enforcement action(s) has imposed on government agencies. This can include all activities of a progressive enforcement response that results in the ACL. Staff costs should be added to the amount..." The Order fails to show the amount of cost that the Regional Board has incurred for this Order. The CDO must consider "other matters that justice may require" and collect cost recovery for staff time spent developing the CDO.

CCR Title 23 Section 2200 states, "Each person for whom waste discharge requirements have been prescribed pursuant to section 13263 of the Water Code shall submit, to the State Board, an annual fee in accordance with the following schedules. The fee shall be submitted for each waste discharge requirement order issued to that person." The State Water Control Board is required to collect annual fees from Dischargers based on the threat and complexity of the discharge, which is determined by the Regional Board. The Discharger clearly has a much high threat and complexity than an otherwise compliant non-15 discharger. The Order fails to include a finding that the Discharger threat and complexity rating is 1A until such time as the CDO is rescinded.

**5. Order Fails to Protect Public Health**

The Regional Board has long expressed a strong desire to have the public actively involved in solutions to ongoing water problems. The Order fails to even consider the possible health risk that raw sewage poses to an unsuspecting and uninformed public. To that end, we believe that the Order should also require the Discharger to post a sewage spills report in the largest local newspaper in order to protect the public health. This public notification allows the public not only to avoid contact with contaminated water but also provides them the opportunity to monitor the effectiveness of the cleanup and

collect their own samples of the surface waters. The spill report should be posted in the newspaper within 48 hours following each wastewater spill. It should include the spill location, cause of the spill, total volume, surface water affected, sample monitoring results collected and corrective action taken to cleanup the spill and measures that will be implemented to prevent reoccurrence. CSPA also recommends that the Regional Board post spill reports on its webpage.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is fluid and cursive, with the first name "Bill" and last name "Jennings" clearly distinguishable.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

# NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT

ROBERT J. PETERSON, P.E.  
District Engineer

DONALD G. RIDENHOUR, P.E.  
Assistant District Engineer

September 29, 2006

Ms. Pamela C Creedon, Executive Officer  
California Regional Water Quality Control Board  
Central Valley  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114

RE: Draft Cease and Desist Order,  
Napa Berryessa Resort Improvement District, Napa County  
Wastewater Treatment System

Dear Ms. Creedon:

The Napa Berryessa Resort Improvement District understands the seriousness of the Draft Cease and Desist Order ("Draft C&D") and had already begun and is continuing to expedite its revamping the district's sewer facilities to deal with the capacity issues noted in as existing, primarily in the winter time, in the wastewater disposal and storage components of the facility. However, as written there are certain portions of the Draft C&D that create considerable concern to District Management and will have a devastating effect on some of the individual landowners in the District. The purpose of this letter is to outline the District's concerns with the Draft C&D, to recommend that certain of the language be modified prior to inclusion in the final Order, and to recommend that provision be made in the final Order by the Central Valley Regional Water Quality Control Board to exclude from those heavily impacted landowner's modest pending projects from the proposed building moratorium.

On September 27 2006, District staff met with Regional Board staff to discuss these issues associated with the Draft C&D. The discussion included the District's concerns regarding the hardships caused by inclusion in the proposed building moratorium of a small number of parcels for which building permit applications on file at the Napa County Building Department were near or at the point of permit issuance when the Notice of Hearing was filed. The discussion also included the repeated and inaccurate statements in the Draft C&D that the District has not done anything to correct violations noted by Regional Board staff to have occurred since 1996. Finally, the discussion included the steps already undertaken and ongoing by the District, as evidenced by its development of a Master Facilities Plan, to bring the District into compliance with all applicable Waste Discharge Requirements to enable the lifting of the proposed sewer connection ban at the earliest possible time for landowners generally within the District.

At this meeting, the Regional Board staff recommended that the District, in their written response, request the Regional Board to consider individual exceptions to the ban for the pending building permits, address the accuracy of the facts listed in the Draft C&D and identify any other specific concerns the District has regarding the content of the C&D.

## **I. Request to Exclude Certain Projects from the Proposed Building Permit Moratorium**

The Draft C&D states that the reason for the proposed sewer connection ban is because the District has been reporting average daily flows within the disposal and storage components of the sewage system which are greater than the 50,000 gallons per day allowed by their WDRs, although with the parcels within the District at significantly less than full buildout the actual average daily flows have not in fact resulted any appreciable impairment of the water resources in the vicinity or in Lake Berryessa itself.

While it is undisputed that the District is receiving and processing average daily flows above what is allowed in the WDRs, the primary cause of the problem appears to be infiltration and inflow (I&I) of rainwater and related groundwater into the District's sewer collection system.

The applicable state regulations relating to imposition of prohibitions or restrictions on additional discharges to community sewer systems (i.e., a moratorium on new connections) provide that the purpose of such limitations:

"is to prevent an increase in violation or likelihood of violation of waste discharge requirements during a period of violation or threatened violation of requirements and thereby to prevent an increase in unreasonable impairment of water quality or an increase in nuisance." (23 California Code of Regulations Section 2244(a), emphasis added)

In the current situation with the capacity exceedences noted in the Draft C&D, the main cause of this violation is I&I. The volume of the I&I is determined solely by the condition of the collection pipes and the amount of rainfall and groundwater, a problem which the District is in the process of correcting. The new connections associated with the pending building permit applications will not be adding any new stretches of damaged pipeline to the existing sewage collection system and they will result in expedited repairs to any such damage in the existing mains in the vicinity of the new connections at the time the new laterals are built, with the landowner's connection fees helping to fund the cost of those spot repairs.

The small number of pending permits and the modest nature of the proposed projects means that any additional effluent added to the system by these few projects would be de minimis in view of the already existing I&I flows and perhaps even fully offset by the spot repairs of existing pipelines facilitated by the connection process. The applicable regulations require restrictions on new connections only if the further addition in volume, type or concentration of the waste entering the sewer system would itself cause an increase in the violation or likelihood of the waste discharge requirements. (23 California Code of Regulations Section 244(b)). That is not the case with the pending projects proposed for exclusion.

The District therefore believes that the evidence shows that allowing the connection of this relatively small number of homes to proceed while the overall I&I problem is being corrected would have little or no net impact on the system. Specifically, at the time the Notice of Hearing was filed there were 12 pending building permits for new homes within the District. The Assessor's Parcel Numbers of the affected lots are as follows:

<b>Building Permit Application No.</b>	<b>Assessor's Parcel No.</b>
B04-00207	019-372-003
B06-01305	019-382-007
B02-00533	019-392-002
B06-01374	019-392-010
B06-01338	019-402-020
B06-01142	019-421-007
B04-00282	019-451-012
B06-01258	019-451-014
B02-00105	019-461-006
B04-01071	019-483-003
B05-01133	019-491-007
B06-01004	019-493-016

Under these circumstances, the District believes that the regulatory purpose for new connection limitations set forth in 23 California Code of Regulations Section 2244 (a) and (b) would not be served by including the pending projects on the above-noted parcels in the proposed new connection ban.

Furthermore, if the purpose of such limitations would not be served by including these projects, then continuing to include them in the final C&D Order could only be viewed as a punitive measure for the District's alleged past failures to comply in all details with the WDRs applicable to the District's water and wastewater systems. The applicable state regulations prohibit connection limitations or restrictions from being used only for punitive reasons. (See 23 California Code of Regulations Section 2244(c)),

For all of these reasons, the District requests the Regional Board to include in the final C&D Order exclusion from the new connection ban of the pending building permits for the above parcels.

## **II. Request for Removal of Irrelevant Material from the Final Cease and Desist Order**

Because a connection moratorium must, under the subsections of 23 California Code of Regulations cited above, serve the purpose of preventing an increase in the existing violations or in increase in unreasonable impairment of water quality or nuisance (i.e., actual pollution of drinking water), and cannot be used as a punitive measure for past failures to comply with WDR conditions, the District believes that only the following items in the Draft C&D are relevant to the moratorium remedy sought to be imposed. The District therefore requests the Regional

Board to state that only the following items in the "Previous Enforcement" (Items 6 through 12) and "Violations of WDRs and C&D Orders" (Items 14 through 48), corrected as shown below, are relevant to and supportive of the connection moratorium being imposed by the final Cease and Desist Order, and that all other items in these sections, corrected as shown in Part III of these Response, are not relevant to or legally supportive of the request for the moratorium:

**Item 23, under 'Spill Violations' that states:**

*'On 21 March 2006, following an 8 December 2005 site inspection the Discharger was issued a NOV for not adequately implementing tailwater controls to prevent wastewater runoff to surface waters. It is assumed that wastewater runoff from the land disposal areas occurs in the winter, however the Discharger is not reporting this information.'*

Although the above statement refers to tailwater control, the NOV issued to the District on March 21, 2006 identified three violations, none being tailwater control. The District does not deny that the actual operation of the disposal field does not always comply with their WDRs; however, the actual procedure used in the winter in fact significantly reduces the probability of discharges to surface waters. This is demonstrated by the fact the District has not experienced a surface water discharge from the disposal field since 1996, and therefore, the current capacity violations have not and are not anticipated to have any potential to impair water quality or cause nuisance (pollution). Therefore the District requests that the Regional Board staff rewrite the statement as follows:

*'On 21 March 2006, following an 8 December 2005 site inspection the Discharger was issued a NOV for not adequately certain controls originally imposed to prevent wastewater runoff to surface waters.'*

**Item 24, under 'Flow Violations' that states:**

*'Discharge Specification No. B.I of WDRs Order No. 95-173 states: "The monthly average discharge shall not exceed 50,000 per day." Regional Water Board Staff's review of monthly monitoring reports submitted between July 2000 and March 2006 indicates that the average monthly discharge has ranged from 26,367 gallons per day (gpd) to 153,724 gpd. During this period, the monthly average discharge exceeded 50,000 gpd for 48 months.'*

**III. Request for Deletion or Correction in the Final Cease and Desist Order of Inaccuracies in Historical Violation Recitations in the Draft C&D**

The corrections of the facts listed in the C&D are meant to clarify the history of the District and are not intended as argument with the general intent of the Draft C&D. The District realizes that it has experienced violations of its WDRs and is committed to correcting them to not only comply with regulation, but to secure their future of providing water and wastewater services to their community. Additionally, the District would like the history to include those corrective

actions requested by the Regional Board and staff in the past, which have been complied with by the District.

The District expressed its concerns at the September 27<sup>th</sup> meeting with Regional Board staff regarding the wording of the historical summary. Regional Board staff recommended that the District respond to the perceived inaccuracies, and provide suggested replacement language for the Regional Board to consider in the Final C&D Order. Therefore, the following are factual corrections and suggested rewrites for clarification presented by the District for the Regional Board's consideration.

**Paragraph 3** of the 'Wastewater Treatment Facility' section of the C&D, a portion of the paragraph states:

*"...As of 2005, the Berryessa Highlands Subdivision consisted of 330 Equivalent Dwelling Units (EDUs) and the Steel Park Resort consisted of 140 EDUs. At full buildout, the maximum number of connections swerved by WWTF will be 635 EDUs at the Berryessa Highlands Subdivision and 140 EDUs at Steele Park Resort."*

The actual total number of EDUs that can connect to the system is 562. This number is derived from accounting for all lots within the District Boundary that are assessed an availability charge for the Districts facilities. Additionally, the Steele Park Resort consists of a total of 228 EDUs.

**Paragraph 5** of the 'Wastewater Treatment Facility' section of the C&D, a portion of the paragraph states:

*"... The Zone No. 1 land application area is located on a hillside above a tailwater pond. The other zones are also located on the hillside, however they do not directly drain into the tailwater pond..."*

While only Zone 1 spray field is designed to drain directly into the tail water pond, the other spray field zones are designed to indirectly drain into the tail water pond. Spray field zones 2, 3 & 4 are designed to drain towards catchment ditches that divert any disposal spray runoff to the tail water pond. Perhaps the Regional Board staff would consider revising the statement as follows:

*"The Zone No. 1 land application area is located on a hillside above a tailwater pond. The other zones are also located on the hillside above catchment ditches that drain to the tailwater pond."*

**Paragraph 12** of the 'Previous Enforcement' section of the C&D indicates that dried sludge from a pilot study remains in a pile on the Zone No. 1 land application area. The District is currently in the process of removing the sludge and will provide a report to the Regional Board upon completion of the sludge removal.

**Paragraph 21** of the 'Violations of WDRs and C&D Orders' subsection of 'Spill Violations' states:

*"On 29 January 2003, the Discharger was issued a Notice of Violation (NOV) for a domestic wastewater overflow estimated at approximately 1,000 gallons. The spill was*



*related to a power outage, a non-operational phone system, and a backup emergency generator not being turned on by the operator following the overflow."*

As discussed during the meeting with Regional Board staff on September 27, 2006, the above violation was issued in error to the District. The site of the reported violation was located at a different wastewater system on Lake Berryessa. Regional Board staff indicated in the meeting that the above violation would be deleted from the District's record and the proposed C&D.

**Paragraph 23** of the 'Violations of WDRs and C&D Orders' subsection of 'Spill Violations' states:

*"On 21 March 2006, following an 8 December 2005 site inspection the Discharger was issued a NOV for not adequately implementing tailwater controls to prevent wastewater runoff to surface waters. It is assumed that wastewater runoff from the land disposal areas occurs in the winter, however the Discharger is not reporting this information."*

The Notice of Violation referenced above was not issued for inadequately implementing tailwater controls to prevent wastewater runoff to surface waters as stated. Rather the Notice of Violation was issued for 1) Sludge continues to be stockpiled within the Zone 1 spray field, 2) The sludge being stored in the pond does not meet requirements of Chapter 15, Division 3, Title 23, of the California Code of Regulations and 3) Daily monitoring of the spray disposal field and reporting of those results in the monthly monitoring reports is not being conducted as per requirements of the Revised Monitoring and Reporting Program. The tailwater issue that Board staff refers to in the Inspection Report containing the Notice of Violation was in fact speculation based on observation of storm water runoff in a spray irrigation zone that was not in use.

The District does not deny that in the past runoff from the disposal areas did enter surface waters, however, according to Regional Board and District records, discharges from the disposal area to surface waters has not occurred since 1996. The reason no discharges have occurred is due to the constant operation of the zone 1 spray field during winter events. Zone 1 is the only spray field zone that drains directly into the re-circulation/ tailwater pond. During storm events, the zone is continuously irrigated and any and all runoff is collected in the re-circulation/tailwater pond and reintroduced into the Zone 1 irrigation system through a pump station and wastewater storage tank. This cycle of spraying, collecting and reintroducing treated effluent into the irrigation system in Zone 1 enables the District to keep the treated effluent away from surface waters, and contained on the disposal site. We realize that operating the disposal system in this manner is a violation of the District's WDRs, however, the District believes it is following the direction of Cease and Desist Order No. 96-232, under Item 2 of the Order which states: "The District shall maximize the use of land disposal to further ensure that spills are limited to the maximum extent possible." The District believes that the winter operation of Zone 1 is consistent with that order. There for the District request that the Regional Board staff rewrite the statement as follows:

'On 21 March 2006, following an 8 December 2005 site inspection the Discharger was issued a NOV for not adequately certain controls originally imposed to prevent wastewater runoff to surface waters.'

**Paragraph 25** of the 'Violations of WDRs and C&D Orders' subsection of 'Spill Violations' states:

*"Discharge specification No. B.3 of the WDRs states: "As a means of discerning compliance with Discharge Specification No. B.3, the dissolved oxygen content in the upper zone (1 foot) of wastewater ponds shall not be less than 1.0 mg/L." Monthly self-monitoring reports from July 2000 through November 2005 indicate that dissolved oxygen measurements in the lined effluent holding basins was less than 1 mg/L on numerous occasions."*

According to the District's current WDRs and the 1995 Monitoring and Reporting Program (MRP) which covered the years 2000 through early 2004, the District was not required to submit dissolved oxygen measurements of the lined effluent holding basins to the Board in the monthly self monitoring reports. The District was however reporting dissolved oxygen levels for the wastewater treatment facility's aeration basin and clarifier. Therefore, the statement above regarding the District having dissolved oxygen levels in the ponds below 1.0 mg/L is not accurate. The dissolved oxygen levels that Board staff refers to were the dissolved oxygen levels in the wastewater treatment facility's aeration basin and clarifier.

In 2004 the Board issued a new MRP that required the District to monitor and report dissolved oxygen levels in the effluent holding basins on the monthly self monitoring reports. In April of 2005, the District began reporting these measurements and has been as of September 28, 2006. During the reporting period the dissolved oxygen levels in the effluent holding ponds has been consistently above 1.0 mg/L.

**Paragraph 30** of the 'Violations of WDRs and C&D Orders' subsection of 'Pond Monitoring Violations' states:

*"On 25 October 2004, the Discharger submitted a report indicating that application of herbicide by Napa County Mosquito Abatement Control District did not include direct treatment of the duckweed. The report also stated that the tailwater pond would be monitored biannually for the presence of duckweed and that when the duckweed covered approximately 50 percent of the pond surface then the duckweed would be manually removed."*

The District has implemented the biannual monitoring and has not had an inundation of duckweed in the tailwater pond since late 2004. The biannual monitoring not only consists of visual inspection of the pond, it includes application of herbicide onto the banks of the pond by the Napa County Mosquito Abatement Control District.

Paragraphs 31 and 32 of the 'Violations of WDRs and C&D Orders' subsection of 'Land Application Area Violations' states:

31: Discharge Specification No. B.14 of WDRs Order No. 95-173 states: "The Discharger may not spray irrigate effluent during periods of precipitation and for at least 24 hours after cessation of precipitation or when winds exceed 30 mph."

32: The Discharger has been in violation of Discharge Specification No. B.14 on numerous occasions. For instance, monthly self-monitoring reports from December 2005 through March 2006 shows that rainfall occurred a total of 46 days and that the Discharger applied wastewater to the land application areas via spray irrigation everyday during those months.

As stated above within the comments for Paragraph 23, the District does not deny that it has utilized its spray fields during times of precipitation. However, the only spray field used in these instances has been the spray field in Zone 1. The Zone 1 spray field is the only zone that directly drains into the recirculation/tailwater pond. Utilizing this spray field during precipitation events, the District is able to re-circulate all wastewater such that no runoff enters any surface waters. While as stated above this is a violation of the District's WDRs, this practice is consistent with the Regional Board staff's directive in the Cease and Desist Order No. 96-232 as stated in the comments for Paragraph 23.

**Paragraph 38** of the 'Violations of WDRs and C&D Orders' subsection of 'Reporting Violations' states:

*"A 23 February 1999 letter from Regional Water Board staff states that monthly self monitoring reports as required by the WDRs were not being submitted according to the time schedules in the Order. In addition, the letter also stated that quarterly progress reports as required by the C&D Order were not being submitted."*

The statement fails to indicate that since the letter dated February 23, 1999, the District has submitted the self monitoring reports as required by the WDR in accordance with the time schedules in the Order. The failure to include the previously noted statement presents the false impression that the District is still in violation of this requirement.

**Paragraph 39** of the 'Violations of WDRs and C&D Orders' subsection of 'Reporting Violations' states:

*"On 11 March 2004, Regional Water Board staff conducted a site inspection of the facility and identified that the Discharger was not reporting freeboard measurements in the tailwater pond as required by the Monitoring and Reporting Program (MRP)."*

As discussed with Regional Board staff at the meeting on September 27, 2006, the MRP is set up in such a way that the District was not aware it was required to take freeboard measurements of the tailwater/re-circulation pond. This is evident in the MRP itself as the monitoring requirement specified in the MRP for the Disposal Area (page 2 and 3 of the MRP) did not include provisions for the monitoring of the tailwater/recirculation pond. The actual Pond Monitoring requirement from the MRP (page 2 of the MRP) was directed to the three treatment ponds at the District's wastewater facility. The District has complied with the pond monitoring requirement from the

MRP as it is written, and now that the District is aware that monitoring of the tailwater/ recirculation pond is required, it will begin doing so immediately.

**Paragraphs 42 and 44** of the 'Violations of WDRs and C&D Orders' subsection of 'Reporting Violations' states:

*42: On 23 July 2004, the Executive Officer issued a California Water Code (CWC) 13267 Order for the non-submittal of the technical reports. The CWC 13267 Order required the Discharger to submit a report that documents removal of vegetation within and around the tailwater pond by 1 September 2004...*

*44: On 25 October 2004, the Discharger submitted a report stating that an herbicide applied by the Napa County Mosquito Abatement Control District (NCMQCD) had been applied to the immediate area of the tailwater pond. However, the Discharger indicated that the herbicide application did not control the duckweed and that mechanical skimmer device would be installed. The Discharger also stated that a manual duckweed management plan would be implemented where the tailwater pond would be monitored biannually for the presence of duckweed. The Discharger indicated that when approximately 50 percent of the tailwater pond is covered with duckweed, manual removal would be performed.*

See comment for Paragraph 30. The biannual monitoring of the re-circulation/tailwater pond has been in effect since late 2004. Since that time, the re-circulation/tailwater pond has been clear of duckweed as per the District's WDRs. Again, the statement as written presents the false impression that the District has not complied with this directive from the Regional Board staff, when in fact the District has been in compliance since November 2004.

**Paragraph 46d** of the 'Violations of WDRs and C&D Orders' subsection of 'Master Plan Study Recommendations' states:

*"The Master Plan Study states that there have been intermittent violations of Discharger Specifications Nos. B.15 and B.16 of the WDRs since the runoff collection ditch at times is used to bypass the tailwater pond during the winter months. The Master Plan Study also states that the only options for the Discharger are to seasonally store the effluent in a large pond or construct a subsurface disposal field."*

The District does not deny that in the past, runoff from the collection ditch has bypassed the tailwater pond during the winter months. However, the District has not bypassed the collection ditch since last reported in 1996. This is due to the fact that, as stated above in the comments for paragraphs 23, 31 and 32, the District only utilizes spray irrigation zone 1 during the winter months which does not drain into the collection ditch, rather it drains directly into the tailwater/recirculation pond for recirculation into spray irrigation zone 1.

#### **IV. Conclusion**


The District realizes the seriousness of the past C&D and proposed C&D and is prepared to fully comply with them and their WDRs. The District has begun the process to revamp their facilities by having a Master Facility Plan prepared to identify, prioritize and cost estimate capital improvement projects, which was completed in June 2006. The projects identified shall bring the District into full compliance with all regulatory agencies as well as secure the District's future for utility services. The next steps for the District are to set in place a financing mechanism to fund the capital improvements, prepare plans and specifications and construct the project. The timelines for reports outlined in the proposed C&D shall be met and the Regional Board shall be kept apprised of the District's progress towards completion.

The District requests that the Regional Board staff include in the agenda package to the Regional Board Members the request in Part I of this letter to exclude from the sewer connection ban the specified building permits based on the presented information and consider any additional letters or testimony from the affected land owners that may be presented at the hearing in this regard. Additionally, the District requests that the Regional Board staff include the corrected facts above and revise their proposed C&D to accurately reflect the District's efforts to comply with the past C&D Order No. 96-232 and their WDRs.

The District is appreciative for the chance to respond to the draft C&D and request opportunity to clarify any questions that Regional Board staff may have.

Sincerely,

ROBERT J. PETERSON, P.E.  
District Engineer

By:   
Nathan J. Galambos  
Principal District Engineer

cc: Mr. Jack DelConte – Principal WRCE, RWQCB Central Valley Region  
Ms. Wendy Wyles – Environmental Program Manager, RWQCB Central Valley Region  
Mr. Mark List – Senior Engineering Geologist, RWQCB Central Valley Region  
Mr. Guy Childs – Engineering Geologist, RWQCB Central Valley Region  
Napa Berryessa Resort Improvement District Board of Directors  
Nancy Watt – Napa County Executive Officer  
Robert Westmeyer – Napa County Counsel  
Margaret Woodbury – Chief Deputy County Counsel  
Janice Killion – Deputy County Counsel  
Robert Peterson – District Engineer  
Don Ridenhour – Assistant District Engineer  
Tim Lanphear – District Supervising Operator  
Steve Lederer – Director of Environmental Management